



CIVIL RIGHTS  
TITLE



PROGRAM

guidelines & appendices



Civil Rights  
**TITLE VI PROGRAM**  
[guidelines & appendices]



# Civil Rights TITLE VI PROGRAM [guidelines]



**Gray Davis**  
Governor  
State of California

**Maria Contreras-Sweet**, Secretary  
Business, Transportation and Housing Agency

**Jeff Morales**, Director

**Algerine McCray**, Deputy Director  
Civil Rights

**Olivia Fonseca**, Assistant Deputy Director  
Civil Rights

**Laura Schaufel**, Title VI Coordinator

**June 2002**



# Civil Rights

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# TITLE VI PROGRAM

[ guidelines ]



**Gray Davis**  
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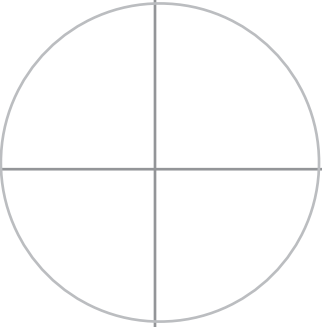
**Jeff Morales**, Director

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Civil Rights

**Olivia Fonseca**, Assistant Deputy Director  
Civil Rights

**Laura Schaufel**, Title VI Coordinator

**June 2002**



*For individuals with sensory disabilities, this document is available in Braille, large print, on audiocassette or computer disk. To obtain a copy in one of these alternate formats, please call or write to*

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## Memorandum

**To:** CHIEF DEPUTY DIRECTOR  
DEPUTY DIRECTORS  
DISTRICT DIRECTORS  
DIVISION CHIEFS  
PROGRAM MANAGERS

**Date:** July 1, 2002

**From:** DEPARTMENT OF TRANSPORTATION  
DIRECTOR'S OFFICE - MS 49

**Subject:** Civil Rights Title VI Program Guidelines

This memorandum transmits the Civil Rights Title VI Program Guidelines (Guidelines). The Guidelines were developed through an interdisciplinary approach with review by and input from the Department's Legal Office, key headquarters division personnel, district offices and one metropolitan planning organization. The guidelines focus on process and delivery of activities, products and services, to whom and when, whether the outcome is a benefit or burden to the eligible population, what was done to mitigate any disparate or disproportionate impacts and whether the actions were documented.

The Federal Highway Administration (FHWA) recognizes California as the leader in Title VI implementation, and will publish the Guidelines on the FHWA Civil Rights Community of Practices Website as a model for other states developing Title VI documentation using the interdisciplinary approach.

The Civil Rights Title VI Program will continue to provide leadership, guidance and technical assistance in meeting compliance with Title VI of the Civil Rights Act of 1964 and related nondiscrimination statutes.

If you need further information, please contact Laura Schaufel, Title VI Program Coordinator at 324-0888.

  
JEFF MORALES  
Director

  
ALGERINE McCRAY  
Deputy Director

Attachment

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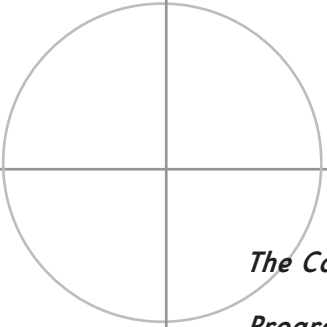
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*The California Department of Transportation (Department), Civil Rights Title VI Program Guidelines is a successful product because of a coordinated effort by several teams and individuals not only throughout the Department but also with our external customers.*

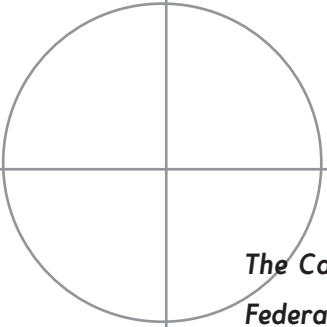
*I would like to thank the Title VI Program Interdisciplinary Team members, Program Area Administrators, District Title VI Liaisons, Native American Liaison Branch, District Native American Liaisons, key program specialists, Federal Highway Administration (FHWA) representatives, and the Southern California Association of Governments (SCAG). It is with their support and expertise these guidelines were created.*

## acknowledgements

*With sincere gratitude, I would also like to acknowledge the Title VI Program staff. Using the empowered team concept, they have diligently made these guidelines a reality.*

*Laura Schaufel*

*Title VI Coordinator*



*The California Department of Transportation (Department), as a recipient of Federal financial assistance, has established a Civil Rights Title VI Program to address nondiscrimination laws that impact transportation investment decision making. Title VI of the Civil Rights Act of 1964, related statutes and policies prohibit discrimination on the basis of race, color, national origin, sex, age and disability in the Department's programs, activities and services. The purpose of Title VI and related statutes and policies is to ensure that public funds are not spent in a way that encourages, subsidizes or results in discrimination.*

*Since April 2000, the Department has aggressively developed and implemented the Title VI Program through an interdisciplinary approach. Civil Rights and program specialists have worked closely together to accomplish the following:*

- 1. Designation of a Title VI Coordinator and staffing.*

## executive summary

- 2. Formation of an Interdisciplinary Team.*
- 3. Approval of the Civil Rights Title VI Program Plan by FHWA.*
- 4. Compliance Review Pilot Project and Survey.*
- 5. Compliance Review Process for Headquarters Programs and district offices.*
- 6. Civil Rights Title VI Program Resource Directory.*
- 7. Title VI Program Publications.*
- 8. Annual Accomplishment and Upcoming Goals Report to FHWA.*
- 9. Title VI Complaint Procedures and Form.*

*The document that follows provides guidance to Title VI Program customers to assist them in meeting compliance with nondiscrimination law. The guidelines focus on process and delivery of activities, products and services, to whom and when, whether the outcome is a benefit or burden to the eligible population, what was*

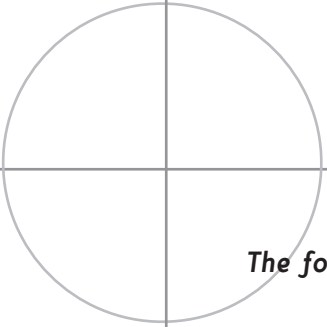
# executive summary

*done to mitigate any disparate or disproportionate impacts and whether the actions were documented.*

*Implementation of the Title VI Program and interaction with Department Headquarters and district personnel, Federal Highway Administration (FHWA), Federal Transit Administration (FTA) representatives and Metropolitan Planning Organizations (MPOs) have led to the following immediate recommendations:*

- 1. Implementation of a comprehensive data collection mechanism and methodologies for analysis to determine disparate or disproportionate impacts.*
- 2. Initiation of context sensitive mitigation measures that reduce the unavoidable adverse impacts to minority or low-income populations.*
- 3. Implementation of a comprehensive Public Involvement Plan.*
- 4. Completion of demographic analysis; statewide and by district; by race, language, gender, age, disability and income.*
- 5. Documentation and record retention of actions taken by decision makers.*
- 6. Implementation of procedure for pre-grant and post-grant reviews of applicants for compliance with Title VI requirements.*
- 7. Adherence to Assurances included in the Nondiscrimination Agreement between the Department and FHWA and the Director's Policy statement.*
- 8. Initiate Headquarters' and district's self monitoring and corrective action.*
- 9. Implementation of mechanisms that provide access to Department programs, activities and services for Limited English Proficient persons.*
- 10. Implementation of a continuous comprehensive training program.*

*In conclusion, the Department decision makers have been supportive and proactively implementing Title VI and related statutes and policy requirements. The recommendations stated above are a requirement of meeting and maintaining compliance with Title VI and related statutes. Time, commitment and resources are needed to fully implement the requirements. The FHWA and FTA support the Department's approach of implementing the Title VI Program.*



*The focal point of the Civil Rights Title VI Program nondiscrimination law is Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color or national origin. Related statutes, which prohibit sex, disability and age discrimination in the Department's programs, activities and services also fall within the purview of the Civil Rights Title VI Program. For a complete listing of these authorities, refer to the Authorities appendix.*

## introduction

*The intent of Title VI is to eliminate barriers that prevent under represented groups from receiving access and benefits from the transportation planning and project development processes and transportation system as a whole.*

*Hereinafter "Title VI of the Civil Rights Act of 1964, related statutes and executive orders," shall be referred to as "Title VI."*

# introduction

## Purpose

The purpose of Title VI is simple: to ensure that public funds are not spent in a way which encourages, subsidizes or results in discrimination. To this end, Title VI bars intentional/disparate treatment and disparate impacts/effects.

The purpose of this document is to provide guidance to Title VI Program customers to assist them in meeting compliance with nondiscrimination laws. Title VI focuses on:

1. Has the eligible population been identified?
2. What Department activities and services are involved?
3. What is the performance measures outcome?
4. Who is the beneficiary?
5. What are the disparate or disproportionate impacts?
6. What was done about the disparate or disproportionate impacts and was that action documented?

## Authority

The Restoration Act of 1987 amended Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975 to restore the broad scope of coverage and to clarify the application of respective laws which include nondiscrimination on the basis of race, color, national origin, disability and age in all programs and activities of recipients of Federal financial assistance. The Department's Title VI Program includes sex in its scope of coverage in accordance with 23 USC 324 the Federal Aid Highway Act of 1973.

Additionally, the Department incorporates the principles of Environmental Justice (EJ), (Executive Order 12898) into its programs, policies and activities to ensure there are no transportation system related disproportionate, adverse impacts particularly in low-income and minority populations. Executive Order 13166 on Limited English Proficiency is also included to ensure meaningful access is provided to persons who are limited in the English language.

## Use of this document

This document is designed to aid reviewing for and verifying compliance with Title VI requirements. The Section on "Requirements for All Programs" includes discussion that, at minimum, must be considered by all Department programs and fully integrated by the Emphasis Programs. The "Emphasis Programs" section discussions are program specific and must be considered and integrated into the planning and project delivery



# introduction

programs respectively. The programs named in the “Other Services” must consider both the “Requirements for All Programs” and “Emphasis Programs” requirements from a direct and monitoring perspective, as they apply.

This document will be updated periodically to reflect changes in law, regulation and/or policy. Your comments on the content and format of this document are welcome on an on-going basis. Provide your comments to the Department of Transportation, Civil Rights Title VI Program, MS 79, 1823 14th Street, Sacramento, California 95814, Attention: Title VI Coordinator.

This document is intended to provide guidance to Department personnel and other interested entities and is not intended to, does not and may not be relied upon to create any right or benefit, enforceable by law by a party against the Department.



## DEPARTMENT OF TRANSPORTATION

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October 26, 2001

### **TITLE VI AND RELATED STATUTES NONDISCRIMINATION STATEMENT**

The California Department of Transportation, under Title VI of the Civil Rights Act of 1964 and related statutes, ensures that no person in the State of California, shall on the grounds of race, color, national origin, sex, disability, or age be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity it administers.

  
JEFF MORALES  
Director



[organization]



# organization

23 CFR 200.9 (4)(b)(I)

*The Department utilizes the FHWA policy guidance “Preventing Discrimination in the Federal-Aid Program: A Systematic Interdisciplinary Approach, Chapter One” (included as an appendix) to set the foundation for developing and implementing the Title VI Program.*

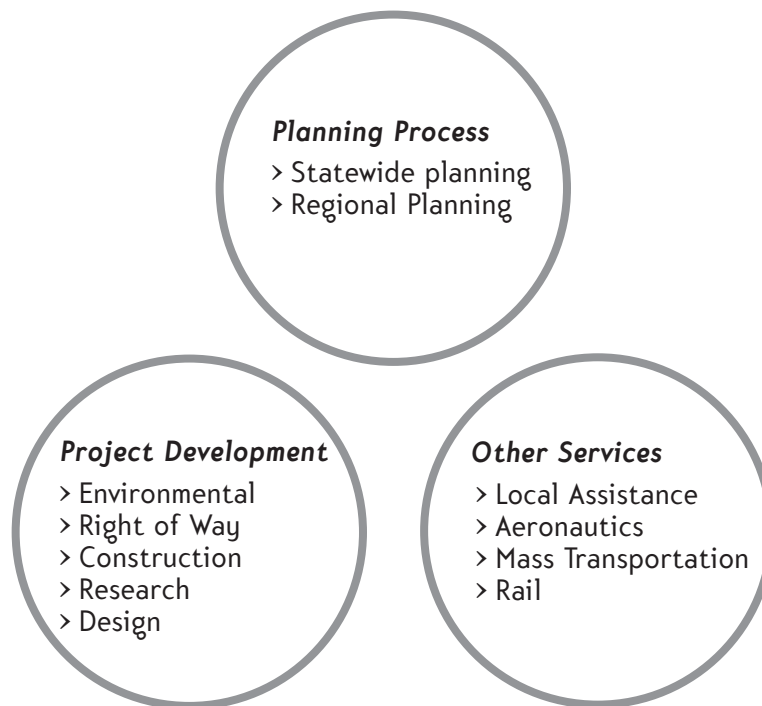
# organization

## Interdisciplinary Approach

The FHWA policy guidance prescribes an interdisciplinary approach to implementing Title VI. This approach requires civil rights and program specialists to work closely to carryout their mutual nondiscrimination program responsibilities.

Title VI nondiscrimination policy impacts **all** transportation decision making programs. However, only those programs having significant impact on the public and business are emphasized in the following illustration and discussions. These programs are referred to as Emphasis Programs.

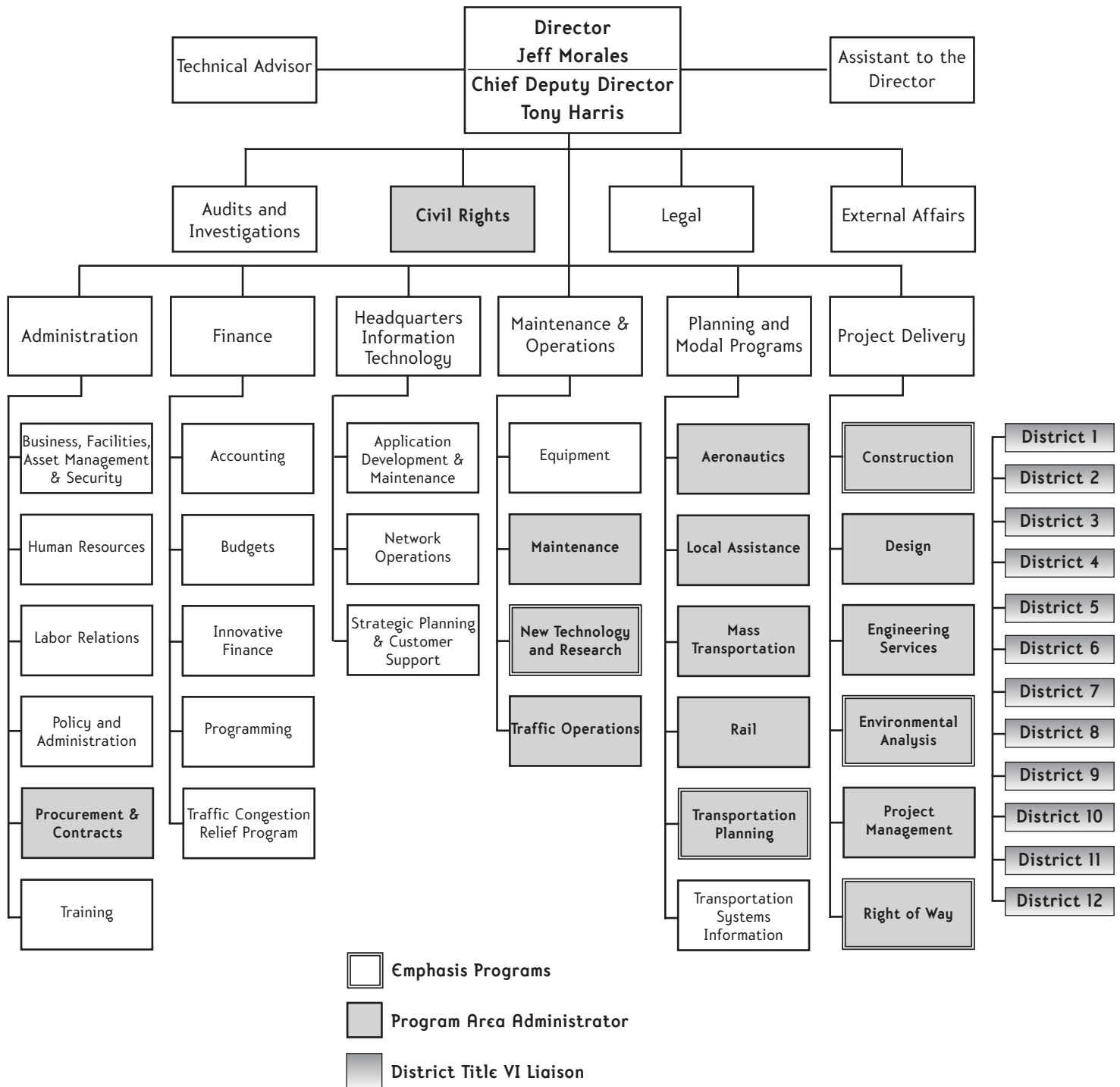
## Transportation Emphasis Programs



The Department's Headquarters Programs and district offices play a vital role in ensuring that Title VI Guidelines are implemented in the transportation arena throughout California. Staff in the districts are usually the first point of contact the public has with statewide transportation planning projects and programs. As such, they are the Office of Civil Rights' eyes and ears in the communities they serve. It is also the district's responsibility to not only involve all affected persons in the planning and project development processes but to work with the Metropolitan Planning Organizations (MPOs) and the Regional Transportation Planning Agencies (RTPAs) to make sure they involve the public in their plans and projects.

# Department of Transportation

## Title VI Program Interdisciplinary Concept



# organization

## Roles and Responsibilities - General

The Department's role involves implementing Title VI, developing the Title VI Program and establishing policies and procedures for identifying and addressing Title VI issues. A Title VI Coordinator was appointed by the Deputy Director of Civil Rights in April 2000 to spearhead the coordination of this effort. All department employees and subrecipients share Title VI responsibility.

### ***The Director and the Chief Deputy Director***

sign nondiscrimination assurances and support and provide resources for the development and implementation of the Title VI Program.

### ***The Deputy Director for Civil Rights***

provides leadership and enforces compliance with Title VI through compliance reviews and certification of department programs and subrecipients. Provides input on department policy directives and develops overall civil rights department guidance. Coordinates and prepares the Annual Element submitted to FHWA.

### ***The Deputy Directors, Assistant Directors, District Directors and Division Chiefs***

promote awareness on Title VI issues and ensure that the Department's actions and services are consistent with policy guidance and with existing Federal and State laws and regulations.

### ***The Legal Division***

is a full-service law office and represents the Department and the State in hundreds of lawsuits each year and provides legal advice and assistance for management and staff at headquarters and in the districts.

### ***The Deputy Director for Planning and Modal Divisions***

oversees the development of policies for planning and the modal divisions and ensures transportation planning processes, products and services comply with Title VI.

### ***The Chief for Division of Transportation Planning***

develops policies and programs to implement and coordinate transportation equity in the planning process. Works with districts, regional planning agencies, Federal agencies and other appropriate entities. Develops strategies to improve the participation of under represented groups in planning and decision making. Provides for sufficient and appropriate data equity analysis and studies for transportation decisions and technical assistance to address and promote Title VI.

### ***The Chief for Division of Environmental Analysis***

ensures compliance with Title VI during project development and within the National Environmental Policy Act process. Conducts project level and community impact assessments concerning adverse environmental, economic, health and social issues

during project development. Provides guidance to internal and external environmental planners on ways to understand, measure and minimize or avoid adverse project impacts on the human environment.

***The Chief for Division of Right of Way***

ensures that the property acquisition for construction transportation projects and its affects are in accordance with Federal and State laws including Title VI requirements.

***The Chief for Division of Design***

ensures project plans, specifications and estimates conform with Federal and State laws including Title VI requirements. Through Project Development Teams, ensures mitigation measures are carried out.

***The Chief for Division of Construction***

ensures the delivery of quality transportation products and services that comply with Title VI during project delivery including mitigation measures. Establishes the division's direction, definition, policy and objectives. Develops and uses performance measures to determine program efficiency and effectiveness.

***The Chief for Division of Engineering Services***

ensures that construction contracts are consistent with Federal and State contracting laws and regulations including Title VI requirements. Conducts outreach to promote the participation of small, disadvantaged, minority, women and disabled veterans business enterprises in the Department's construction contracts.

***The Chief for Division of Procurement and Contracts***

ensures that department service contracts and construction contracts under \$120,000 are consistent with existing Federal and State contracting laws and regulations including Title VI requirements.

***The Chief for Division of New Technology and Research (NT&R)***

in collaboration with academic and industry partners, including minority institutions, is responsible for developing innovative technologies to build the transportation system of the 21st century in accordance with Title VI requirements. In addition, the NT&R Program works closely with other Department programs and State agencies to provide design, construction and maintenance solutions to day-to-day problems.

***The Chief for Division of Local Assistance***

ensures that all local agencies receiving Federal-aid funds through the Department are fully informed of and comply with Title VI requirements.

***The Chief for Division of Human Resources***

ensures nondiscrimination in its policy and procedures for quality personnel management practices including translation services for Limited English Proficient bilingual service.

# organization

## ***Division Managers***

actively participate to maintain compliance with Title VI requirements and provide appropriate resources, time and training to deliver the products and services.

## ***District Division Chiefs for Planning, Public Transportation and Programming***

ensure planning activities comply with Title VI. Work with local and regional planning agencies to maintain a coordinated effort.

## ***District Division Chiefs for Environmental Program and Project Delivery***

ensure activities comply with Title VI requirements in developing, evaluating and implementing transportation projects.

## ***The Chief of the Native American Liaison Branch***

ensures that within the Division of Transportation Planning, Office of Regional and Interagency Planning, the Chief, Native American Liaison Branch serves as Department ombudsperson on Native American issues and initial contact for Native American legal issues. Serves as liaison between the Department, Tribal Governments and other involved third parties to promote government-to-government relationships. Provides information, training and facilitation services related to issues affecting Native American communities.

## ***Equal Opportunity Manager,***

Discrimination Complaint Investigations Unit conducts and ensures timely and comprehensive investigations of Title VI discrimination complaints and reporting those complaints to FHWA and Title VI Coordinator.

## ***All Employees***

comply with Director's Policy Statement, Federal and State laws and regulations in their day-to-day activities. Shall use context sensitive solutions, when applicable, as an approach to plan, design, construct, maintain and operate the transportation system.

## ***Regional Transportation Planning Agency/Metropolitan Planning Organization, local city and county subrecipients***

role is to have a continually cooperative and comprehensive transportation planning process that results in plans and programs that consider all transportation modes and supports metropolitan community development and social goals. These plans and programs shall lead to the development and operation of an integrated intermodal transportation system that facilitates the efficient, economic movement of people and goods in a seamless manner across California.

Transportation planning agencies actively participate in maintaining compliance with Title VI requirements and provide appropriate resources, time and training to deliver the product and services consistent with these Federal mandates. This effort will be conducted in coordination with a public comment period before a public involvement process is adopted or revised.



## ***Consultant, contractor, supplier, university and college subrecipients***

role is to fulfill the scope of contract requirements inclusive of Title VI requirements.

## **Roles and Responsibilities - Specific**

### ***The Title VI Coordinator***

23 CFR 200.9 (4) (b) (2)

Is the Department expert on the Title VI Program Plan and Guidelines and plays a lead and participatory role in the development and implementation of the FHWA, FTA, Federal Aviation Administration (FAA) Title VI Compliance Program statewide.

The Title VI Coordinator:

- Provides guidance and technical assistance on Title VI matters and has overall program responsibility for preparing required reports regarding Title VI compliance and initiating monitoring activities including developing procedures and monitoring for the:
  - Prompt processing and resolution of Title VI complaints.
  - Collection of statistical data (race, color, national origin, sex, disability and age) on participants in and beneficiaries of the Department's programs, activities and services.
  - Identification and elimination of discrimination when found to exist.
  - Prompt resolution in deficient areas.
  - Pre-grant and post-grant approval reviews for compliance with Title VI requirements.
- Conducts Title VI compliance reviews of department program area activities and cities, counties, consultants, contractors, suppliers, planning agencies and other subrecipients of Federal financial assistance.
- Ensures that Title VI requirements are included in policy directives and that the procedures used have built-in safeguards to prevent discrimination.
- Coordinates the development and implementation of a training program.
- Prepares an annual report of Department Title VI accomplishments and upcoming goals including an annual update to the Title VI Program Plan that reflects organizational, policy and implementation changes.
- Assists program personnel to correct Title VI problems or discriminatory practices or policies found when conducting self monitoring and compliance review activities.
- Develops Title VI information for public dissemination, where appropriate, in languages other than English.
- Refers Title VI discrimination complaints to the Civil Rights, Office of Equal Opportunity, Discrimination Complaint Investigation Unit (DCIU).

### ***Title VI Liaison(s), Headquarters***

23 CFR 200.9 (4) (b) (2)

Work at the direction of the Title VI Coordinator to assist and support the Department's

# organization

Title VI Program's role and responsibilities and are experts on the Title VI Program, Plan and Guidelines.

The Headquarters Title VI Liaison:

- Advises the Title VI Coordinator of Title VI issues.
- Provides technical assistance to Title VI Program Area Administrators, District Title VI Liaisons and other program personnel.
- Refers Title VI discrimination complaints to the Civil Rights, Office of Equal Opportunity, DCIU.
- Reviews policy directives for Title VI compliance to ensure that procedures used have built-in safeguards to prevent discrimination.
- Conducts Title VI compliance reviews of department program areas and cities, counties, consultants, contractors, suppliers, planning agencies and other subrecipients of Federal financial assistance.
- Assists program personnel to correct Title VI problems or discriminatory practices or policies.
- Develops Title VI training modules and conducts Training-for-Trainers and workshops.
- Reviews and analyzes statistical data provided by programs on participants in and beneficiaries of the Department's programs, activities and services.
- Develops Title VI information for public dissemination, where appropriate, in languages other than English.
- Participates in pre-grant and post-grant approval reviews for compliance with Title VI requirements.

## ***Title VI Interdisciplinary Team (T6-IT) members***

provide guidance to civil rights and program personnel and serve as advisors to fully implement the Title VI Program. This coordinated and cooperative approach of teaming program and civil rights specialists is essential to adequately mitigate identified adverse impacted communities and to ensure mechanisms are in place to avoid discrimination. The T6-IT focus is to:

- Foster awareness of nondiscrimination requirements.
- Participate in the development and implementation of the Title VI Plan and Guidelines.
- Identify and prioritize areas of vulnerability and/or need.
- Formulate and prioritize strategies to address areas of vulnerability.
- Develop a Title VI Work Plan.
- Establish program roles and responsibilities.
- Act on the Title VI Program Plan.
- Continuously assess the plan's effectiveness.

# organization

Representatives from FHWA and the FTA are invited to participate in the process as well. The T6-IT members include representatives from:

Civil Rights	Division of New Technology and Research
Division of Construction	Division of Procurement and Contracts
Division of Design	Division of Project Management
Division of Engineering Services	Division of Right of Way
Division of Environmental Analysis	Division of Traffic Operations
Division of Local Assistance	Division of Transportation Planning
Division of Maintenance	Legal Division

## ***Title VI Program Area Administrators (PAA)*** 23 CFR 200.9 (4) (b) (2)

Understand the application of Title VI to their respective program areas and are responsible for ensuring Title VI compliance in their respective divisions through policy development, procedures and monitoring.

These individuals work closely with the Title VI Coordinator and Headquarters and District Title VI Liaisons and function as liaisons between the Title VI Program and the districts.

### **Title VI PAA:**

- Advise the Title VI Coordinator and their respective management of Title VI issues.
- Ensure that Title VI requirements are included in policy directives, contracts and program manuals and that the procedures used have built-in safeguards to prevent discrimination.
- Ensure the collection and analysis of statistical data to determine transportation investment benefits and burdens to the eligible population, including the minority and low-income populations.
- Self monitor and corrective action within their respective division/district for Title VI compliance.
- Provide guidance and technical assistance to program staff to correct Title VI problems or discriminatory practices or policies.
- Work with District Title VI Liaisons to promote awareness of Title VI requirements, policies and processes.
- Assist the Title VI Coordinator in coordinating and conducting compliance reviews.
- Provide the Title VI Coordinator with an annual report of Title VI accomplishments and upcoming goals including program update that reflects organizational, policy and implementation changes for inclusion in the annual Title VI Program Plan update.
- Refer Title VI discrimination complaints to the Department's Civil Rights, Office of Equal Opportunity, DCIU.

# organization

- Develop Title VI information for public dissemination, where appropriate, in languages other than English.
- Participate in pre-grant and post-grant approval reviews for compliance with Title VI requirements.

## ***District Title VI Liaisons***

23 CFR 200.9 (4) (b) (2)

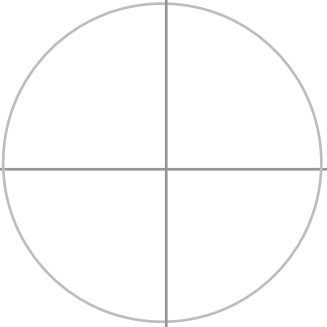
Work closely with the Title VI Coordinator, Title VI Liaisons, Title VI PAA and District Equal Opportunity Officers to implement the Department's Title VI Program Plan through programs, procedures and ongoing monitoring in the district. District Title VI Liaisons are located in each of the 12 district offices and are responsible for ensuring Title VI compliance in their respective districts.

The District Title VI Liaisons:

- Advise the Title VI Coordinator and district management of Title VI issues.
- Promote and heighten Title VI awareness.
- Provide technical assistance to Headquarters, district and regional transportation planning agencies, cities and counties personnel.
- Assist district officials with the review of local and regional transportation agency Public Participation Plans, Regional Transportation Plans, Overall Work Plans, Environmental Impact Reports, Transportation Concept Reports and other types of plans and grant applications in relationship to Title VI requirements.
- Assist the Title VI Program with coordinating compliance reviews conducted.
- Self monitor and corrective action within their respective division/district for Title VI compliance.
- Ensure documentation of Title VI activities.
- Assist in the preparation of the annual Title VI Program Plan update as requested by the Title VI Coordinator or respective PAA.
- Refer Title VI complaints to the Civil Rights, Office of Equal Opportunity, DCIU.
- Ensure the collection and analysis of statistical data to determine transportation investment benefits and burdens to the eligible population, including the minority and low-income populations.
- Develop Title VI information for public dissemination, where appropriate, in languages other than English.
- Participate in pre-grant and post-grant approval reviews for compliance with Title VI requirements.

[public involvement]





*Public involvement is fundamental and essential in achieving equitable transportation that meets the needs of all persons in the State of California. Public participation provides for public involvement of all persons (including Native Americans, minorities and low-income persons), affected public agencies, representatives of transportation agency employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transit and other interested parties of the community affected by transportation plans, programs and projects.*

## public involvement

200.9 (4) (b) (12); 23 CFR 450.212; 23 CFR 450, 771; 49 CFR 21.5 (1); 49 CFR 619, 622; 28 CFR 42.405

*How does a transportation agency grab and hold people's interest in a project or plan, convince them that active involvement is worthwhile and provide the means for them to have direct and meaningful impact on transportation decisions. Public participation is the key. Engaging stakeholders, businesses and the public early in the project scoping, planning process and maintaining that communication through project implementation is critical.*

*Department planning processes must include a proactive public involvement process that provides complete public information, timely notice, full public access to key decisions and supports early and continuing involvement of the public in developing transportation plans and Transportation Improvement Programs. The public involvement process includes the following:*

# public involvement

- Public comment period prior to initial adoption or revision of public involvement process.
- Timely information about transportation issues and processes to all interested parties involved and affected by transportation plans, programs and projects.
- Reasonable public access to technical and policy information used in development of transportation plans and Transportation Improvement Programs. Open public meetings.
- Adequate public notice of public involvement activities and time for public review and comment at key decision points including but not limited to approval of transportation plans and Transportation Improvement Programs.
- Demonstrate consideration and response to public input received during planning and project development processes.
- Make a concerted effort to involve the public, especially those traditionally underserved by existing or future transportation systems including but not limited to low-income and minority households.
- Ensure opportunities for significant input on a draft transportation plan or Transportation Improvement Program (TIP). Summarize the input received and include the summary as part of the record supporting the final plan and TIP.
- Where final transportation plan or TIP differs significantly from one presented for public comment by a transportation planning agency and raises new material issues which interested parties could not have reasonably foreseen from public involvement efforts, an additional opportunity for public comment on the revised plan or TIP shall be made available.
- Periodic review of the public involvement process to ensure standards are met, to evaluate the public involvement process for effectiveness and to ensure full and open access to all.
- Coordination of metropolitan planning processes, where necessary, with Statewide public involvement processes to enhance public consideration of the issues, plans and programs and reduce redundancies and cost.
- Ensure opportunity for full participation and provide accommodation for persons with disabilities at meetings by:
  - a. Meeting in a fully accessible facility.
  - b. Providing notice that documents can be made in alternate formats upon request.
  - c. Considering accessible alternatives such as videos with real-time captioning, the use of interpreters or Braille.
  - d. Effectively accommodating hearing impaired persons by providing sign language interpreter or real-time captioning.



# public involvement

The Public Involvement process includes the development of procedures for the collection and analysis of statistical data of public participants in, and beneficiaries of State transportation programs; establishment of procedures to identify and eliminate discrimination; and identification and implementation of affirmative measures to ensure nondiscrimination. The State, and any other agencies/organizations which are responsible for satisfying the statewide transportation planning and programming requirements, will accomplish this task through their integrated transportation planning processes including the public involvement process for the statewide transportation plan and the federal statewide transportation improvement program.

See Public Involvement appendix for reference tools that have been successfully used by transportation planning agencies.







# requirements for all programs

*The discussions that follow have been developed to address the primary areas of concern regarding compliance with Title VI requirements. These discussions should be considered at a minimum by all Department programs. The Emphasis Programs and Other Services Programs must integrate them into their processes/procedures, activities and services.*

*Program specific considerations are discussed in both the “Emphasis Programs” and “Other Services” requirements sections by specific program.*

# requirements for all programs

## Compliance Reviews

23 CFR 200.9 (4) (b) (5), (6), (7);  
23 CFR 200.11; 49 CFR 21.9

The Title VI Program is required to conduct compliance reviews of Department programs and its subrecipients. The purpose of the compliance review process is to determine if the Department's Emphasis Programs and Other Services Programs and subrecipients are meeting Title VI compliance requirements.

A compliance review schedule will be posted in the fall of each year on the Title VI Program website when the website is implemented, or contact the Title VI Coordinator and request a copy of the schedule. Programs scheduled for review will be notified in writing at least 60 days in advance to coordinate a date to ensure the attendance of the Division Chief or District Director and key personnel. The notice of review (NOR) will include a compliance review instrument containing questions that the programs are required to answer in writing and return 30 days prior to the scheduled on-site review.

The Title VI Program staff will review the program response during the desk review process in advance of the on-site review. The on-site review will be conducted over a five-day period and consist of an entrance conference, review of files and documentation, interviews and an exit conference.

A Determination of Findings (DOF) will be issued within a 30-day period following the exit conference. A copy of the findings is provided to the Department Director, Chief Deputy Director, Civil Rights Deputy Director and to the appropriate executive staff of the program being reviewed, FHWA and FTA. No action on the part of the program is required on findings of compliance, unless a condition of compliance is specified. However, programs found out of compliance are required to develop a Corrective Action Plan (CAP) to overcome any deficiencies noted in the DOF within a period not to exceed 90 days. If it is determined that the matter cannot be resolved voluntarily, by informal means, action will be taken to effectuate compliance. See the Corrective Action section that follows.

District compliance reviews will follow the process described above with the exception of the on-site review period. District on-site review periods range from 5-10 days allowing time to include review of various program areas which may include planning, environmental, right of way, construction, contracting and research.

The Department will attend the FTA/FHWA Triennial review of Metropolitan Planning Organizations (MPOs) and will assist the MPO in addressing any corrective actions or recommendations when appropriate. Local agencies compliance reviews will be conducted by the Division of Local Assistance with participation from the Title VI Program.

The Department will not conduct Title VI compliance reviews of universities and colleges. Universities and colleges are reviewed by the Department of Education for compliance

# requirements for all programs

with Title VI. Rather, the Department will specifically monitor contracts with universities and colleges for compliance with Title VI requirements.

## **Corrective Action** 23 CFR 200.9 (4) (b) (15); 23 CFR 200.11; 49 CFR 21.13

Effective compliance of Title VI requires the Department to take prompt action to achieve voluntary compliance in all instances in which noncompliance is found.

If a Department program or subrecipient is found out of compliance or is believed to be out of compliance with Title VI, the Department has three potential remedies:

1. Resolution of the noncompliance status or potential noncompliance status by voluntary means by entering into an agreement which becomes a condition of assistance,
2. Where voluntary compliance efforts are unsuccessful, a refusal to grant or continue the assistance is initiated or
3. Where voluntary compliance efforts are unsuccessful, referral of the violation to the FHWA, FTA or Federal Aviation Administration (FAA) who will forward to the U.S. Department of Justice for judicial consideration.

Efforts to secure voluntary compliance should be undertaken at the outset in every noncompliance situation and should be pursued through each enforcement action. Similarly, when an applicant fails to file an adequate assurance or apparently breaches its terms, notice should be promptly given on the nature of the noncompliance problem and identify possible consequences thereof and an immediate effort made to secure voluntary compliance.

Oversight monitoring of contract/grant/permit/loan subrecipients is critical to ensuring compliance with Title VI. This responsibility lies with each division and district. In the event, noncompliance cannot be corrected by voluntary means contact the Title VI Coordinator for assistance.

## **Consultation with Tribal Governments** 23 CFR 450.104, 450.210 (5);EO 13175

The Federal Transportation Equity Act for the 21st Century (TEA-21) reinforced the Federal emphasis on Tribal Government participation in transportation planning that was initiated by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). Federally recognized Tribes are familiar with the Federal “consultation” process that requires agencies to identify when the agency is **formally** consulting with the Tribe.

*Consultation means that one party confers with another identified party and, prior to taking action(s), considers that party’s views.* 23 CFR 450.104

# requirements for all programs

Tribal Government refers to the recognized government, or political unit of a Tribe.

Federal law requires intermodal planning for the geographic area, which includes the concerns of Tribal Governments having jurisdiction over lands within the boundaries of the State. Considerations should include:

- Transportation problems
- Land use
- Employment
- Economic development
- Environment
- Housing and Community development objectives. CFR 23, Section 450.206

Issues may also include Tribal Governments' concerns about projects outside their jurisdiction that have the potential to impact their communities or cultural resources.

It is important to know with whom you are consulting and what methods are most effective:

- Each federally recognized Tribe is a sovereign government. Each Tribe has its own form of government and protocol for how business is to be conducted. There is no singular approach. Unless directed otherwise by the Tribe, correspondence should be addressed to the Tribal Chairperson.
- Tribal leaders are frequently participating on their own time and money. Agencies need to be cognizant of this and act accordingly; e.g., be flexible when and where meetings are scheduled. A meeting with the Tribal Government (most often referred to as the Tribal Council) is usually the most effective way to communicate.
- Providing enough time for the Tribal Government to respond is important. Most Tribal Governments meet once a month, and it may be difficult to put additional items on the agenda if not given enough time.

In 1999, the California Transportation Commission (CTC) adopted additional Guidelines, which included:

## ***Interests of Tribal Governments***

The Regional Transportation Plan (RTP) process shall meet the Federal and State requirement to consult with and consider the interests of Indian Tribal Governments in the development of transportation plans and programs, including funding and programming of transportation projects accessing tribal lands through State and local transportation programs.

The Commission adopted a policy requiring Regional Transportation Planning Agencies (RTPA) to address—in a current RTP—the requirements in the RTP Guidelines as a condition of accepting a Regional Transportation Improvement Program (RTIP) for

inclusion in the State Transportation Improvement Program (STIP). Therefore, it is important that the RTP reflect not only the method used to consult with Tribes, but to identify what the tribal interests are and how they have been considered, including funding projects that address these interests.

See the Native American appendix for additional information regarding the requirements that govern the funding and planning of transposition projects related to issues and concerns of federally recognized Tribal Governments.

## **Contracts/Grants/Permits/Loans Assurances**

23 CFR 200.9, 633; 49 CFR 21.7; Non Discrimination Agreement (NDA)

As a recipient of Federal assistance, the California Department of Transportation executed a Nondiscrimination Agreement (See Assurances/Agreements appendix) with the FHWA. The Department agreed that each program activity and facility will be conducted and operated in compliance with the nondiscriminatory requirements imposed by or pursuant to this agreement. These assurances are given for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance, and it is binding on other recipients, sub-grantees, contractors, subcontractors, transferees, successors in interest and other participants in the transportation programs emphasized by FHWA.

In the Nondiscrimination Agreement with the FHWA, the Department pledged that it shall:

- Comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d - 2000d-4 (the Act),
- Comply with the CFR Title 49, Subtitle A, Part 21 requirements (the Regulations),
- Comply with other pertinent directives
- Insert the following notification in all solicitations for bids for work or material subject to the regulations and made in connection with Department programs and in adapted form all proposals for negotiated agreements:

“The recipient, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252,42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 26 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex, handicap/disabled, age in consideration for an award.”



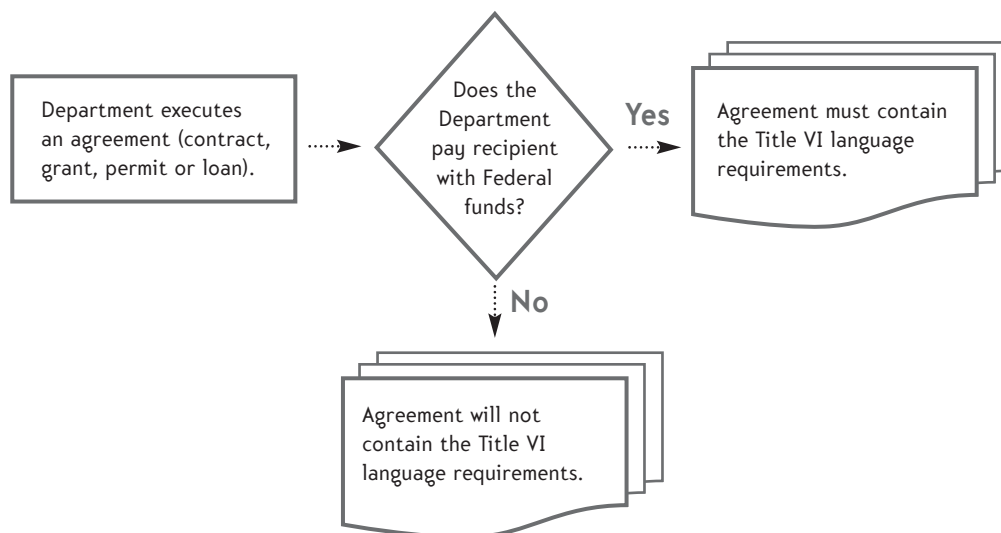
# requirements for all programs

- Insert the clauses contained in “Appendix A” of the Assurances in every contract subject to the Act and the Regulations.
- When the United States conveys land or property to the Department, the clauses in “Appendix B” of the Assurances must be included.
- When the Department issues licenses, leases, permits or any similar instruments; e.g., Tenancy Agreements; the clauses in “Appendix C” of the Assurances must be included in those instruments.

The appendices referred to above are required as a condition for receiving Federal financial assistance. These appendices are made part of the contract/grant/permit/loan agreement and enjoins the applicant from taking specified actions, requires that specified remedial actions be taken and/or provides for other appropriate relief. The terms of the agreement become effective once the assistance is granted and are attached as a special condition to the assistance agreement.

Department programs that administer grants must establish procedures for pre-grant and post-grant approval reviews of applicants for compliance with Title VI including a mechanism to check for prior Title VI violations. The Department will monitor contracts for compliance with Title VI requirements.

The diagram below illustrates the flow of responsibility for recipients of Federal financial assistance. The same responsibility applies whether the assistance is through a contract, grant, permit or loan.



Refer to the Assurances/Agreements appendix for additional information and related language requirements.

# requirements for all programs

## Self Monitoring

23 CFR 200.9 (4) (b) (I); NDA

Monitoring requires tracking, regulating and observing processes. Self monitoring requires programs to track, regulate and observe their processes to ensure compliance with Title VI.

Documentation is a critical element of the compliance monitoring process. It is relied upon to provide evidence, proof and support of historical facts during monitoring and compliance review activities. It is recommended that policy decisions, procedures, analysis, actions and outcomes be documented as part of your daily routine.

The questions below address process expectations. Affirmative responses to these questions are good indicators that mechanisms for preventing discrimination are in place and it is likely that compliance will be/is met.

### **General**

1. What is your process for advertising Public Notice that your program is an equal opportunity program and/or that Federal law prohibits discrimination? Refer to the appendix on this subject.
2. What is the process followed when a new policy directive is issued?
3. Is the PAA, District Title VI Liaison and/or Title VI Coordinator involved in policy development?
4. What are the procedures for handling a Title VI complaint?
5. How are your customers made aware of their right to file a Title VI complaint?
6. How are Title VI complaint procedures disseminated to program personnel?
7. When awarding a contract, grant, loan or permit, what mechanism is used to ensure that the contractor or applicant does not have any unresolved Title VI violations?
8. What process has been established to monitor data collection and contracts and grants language requirements?

### **Program Area Administrator and District Title VI Liaison**

1. What role does the PAA or District Title VI Liaisons play in the Title VI Program in general and in the conduct of compliance reviews?
2. How does the PAA or District Title VI Liaison assist program area personnel in obtaining public involvement?
3. Has Headquarters or district personnel attended MPO planning meetings?
4. Have the PAA, District Title VI Liaison, key program personnel attended public meetings or hearings held for projects? Is it documented?
5. What role does the PAA, District Title VI Liaison and/or key program personnel play to facilitate participation of historically under represented groups and accessibility to the location of the meetings or hearings?



# requirements for all programs

## **Data Collection and Records**

Data collection is necessary to analyze whether disparate impacts occur and provide documentation of actions taken and why. The disparate impacts are relevant to the actions of the recipient and the beneficiary.

1. What records and reports are maintained that specifically reflect compliance with Title VI?
2. What data (race, color, national origin, language considerations, sex, disability and age) does the recipient maintain that reflects the extent to which members of minority groups are beneficiaries of your program?
3. Who is responsible for developing, maintaining, monitoring and reporting this data?
4. How is this data used?

## **Complaint Handling**

23 CFR 200.9 (4) (b) (3); 49 CFR 21.11 (b); NDA

The following discussion provides a summary of the Department's Title VI and related statutes complaint handling process. Refer to the Complaint Handling appendix for details regarding the Department's Title VI and related statutes discrimination complaint process. Any person who believes that he/she has been excluded from participation in, denied benefits or services of any program or activity administered by the Department or its subrecipients, consultants or contractors on the basis of race, color, national origin, sex, disability or age may file a complaint of discrimination under Title VI and related statutes. Under no circumstance, is the complainant discouraged from filing a complaint. The Discrimination Complaint Investigation Unit (DCIU) is the Department authority designated to determine whether "prima facie" is established.

Title VI disallows intentional disparate treatment and disparate impacts/effects. A claim of intentional discrimination/disparate treatment is an allegation that similarly situated persons are treated differently because of their race, color, national origin, gender, disability or age. To prove intentional discrimination, one must show that "a challenged action was motivated by an intent to discriminate." This requires a showing that the decision maker was not only aware of the complainant's race, color, national origin, gender, disability or age; but that the recipient acted, at least in part, because of the complainant's race, color, national origin, gender, disability or age.

Disparate Impact/Effects cases involve either "individual" or "class" discrimination (or both). For example, if two organizations apply for a grant that is Federally funded and one is rejected because the decision maker dislikes membership of the rejected applicant's race, this constitutes disparate treatment. If the decision maker repeatedly rejects applicants representing a particular race, this may indicate class discrimination or a "pattern and practice" of discriminatory conduct by the recipient.

# requirements for all programs

All Title VI and related statutes discrimination complaints must be forwarded to the Department's DCIU for investigation and follow-up. The DCIU is responsible for first establishing prima facie; i.e., tying the complainant's reason for his/her complaint to the discriminatory action or basis; then conducting an objective and impartial investigation, collecting factual information and preparing a fact-finding report based on the information obtained from the investigation.

All Title VI and related statutes complaints are considered to be formal, as there is no Title VI informal process. Complaints must: 1) be in writing and signed by the complainant, 2) describe the event(s) leading to the discriminatory action, 3) include allegations based on issues involving race, color, national origin, sex, disability or age; 4) be filed no later than 180 days after:

- The date of the alleged act of discrimination; or
- The date when the person(s) became aware of the alleged discrimination; or
- Where there has been a continuing course of conduct, the date on which the conduct was discontinued.

The DCIU reviews the complaints upon receipt to ensure that all relevant information is provided, the complaint is timely and meets jurisdiction. All Title VI complaints will be investigated unless:

- The complaint is withdrawn.
- The complainant fails to provide required information after numerous requests.
- The complaint is not filed timely.

Any issues that do not involve discrimination or are not based on a protected basis will be directed to the appropriate entity.

After a valid complaint is received by the DCIU, the complainant is sent a letter acknowledging receipt of the complaint, the name of the investigator and is provided his/her rights under Title VI and related statutes. The investigator prepares and submits an investigative report and supporting documentation for review within 40 days after receiving the complaint to the Chief of the Office of Equal Opportunity. The complainant can expect to receive a determination of finding within a 60-day period.

For additional information regarding the complaint process, refer to the appendix on this subject.

# requirements for all programs

## Annual Report

23 CFR 200.9 (4) (b) (10)-(11); 49 CFR 21.9; NDA

Annually, the Title VI Program submits to the FHWA an accomplishment report detailing its accomplishments and each emphasis program's accomplishments for the past year and goals for the upcoming year. The reporting period is October 1 through September 30, which is the Federal Fiscal Year. Programs are contacted in writing early in August to provide their respective programs accomplishments and goals. The information supplied is compiled and submitted to the FHWA by October 1 of each year. Performance measures need to be identified.

For additional information on report format, refer to the sample annual report format provided in the appendix.

## Assistive Services

Americans with Disabilities Act 1990 (ADA);  
Restoration Act of 1984

In an effort to provide equal access to communications and meet the disability needs of its employees and the public, Department programs must advertise one of the following two statements on all publications and/or communications, as appropriate, that assistive services and alternate formats are available upon request.

For individuals with sensory disabilities, this document is available in Braille, large print, on audiocassette or computer disk. To obtain a copy in one of these alternate formats, please call or write to the Department of Transportation, (identify the appropriate division name, address and phone number).

For individuals with disabilities, assistive services such as sign language interpreting, real-time captioning, note-takers, reading or writing assistance or training/meeting materials in Braille, large print, on audiocassette or computer disk can be provided upon request. To obtain such services or copies in one of these alternate formats, make the request a minimum of 10 working days prior to the event.

**(Name of contact person)**

**(Division Name)**

**(Mailing Address)**

**(Phone number) Voice**

**(Phone number) TTY** - If your division does not have TTY, identify the California Relay System and their telephone number 1 (800) 735-2922

Contact the Department's Civil Rights, Office of Equal Opportunity at (916) 324-0988 Voice or (916) 324-2252 TTY for technical assistance or to obtain a California Assistive Service Resources List.

# requirements for all programs

## Limited English Proficiency

EO 13166; NDA

Limited English Proficiency is a term used to describe individuals who are not proficient in the English language. California is home to millions of individuals from different cultures and backgrounds. A significant number are limited English proficient (LEP). An example of this is identified by the California Department of Education language census, which reveals there are 5.7 million students enrolled in public schools K-12, of which 25% or 1.4 million are LEP. At a national level, a total of 3.4 million LEP students are enrolled in public schools. California represents 42% of K-12 LEP students enrolled in public schools nationally.

### **Authority:**

Executive Order (EO) 13166 - Improving Access to Services for Persons With Limited English Proficiency, August 2000 is directed at implementing the protections afforded by Title VI of the Civil Rights Act of 1964 and related regulations. Accordingly, it prohibits recipients of Federal financial assistance from discriminating based on national origin by failing to provide meaningful access to services to individuals who are LEP. This protection requires that LEP persons be provided an equal opportunity to benefit from or have access to services that are normally provided in English.

### **How does LEP affect the Department of Transportation?**

There are two laws that require the Department to provide LEP persons with meaningful access to programs, activities and services. The following matrix illustrates these laws/policy and the considerations.

Title VI of the Civil Rights Act of 1964	Limited English Proficiency Executive Order 13166	Dymally-Alatorre Bilingual Services Act
• Federal law	• Federal policy	• State law
• Enacted in 1964	• Signed August 2000	• Enacted in 1973
• Considers all persons	• Considers the eligible population	• Considers the current customer base
• Contains monitoring and oversight compliance review requirements	• Contains monitoring and oversight requirements	• Lacks monitoring and evaluation mechanisms
• Factor criteria is required, no numerical or percentage thresholds	• Factor criteria is required, no numerical or percentage thresholds	• Threshold — substantial number and 5 percent or more customer base
• Provides protection on the basis of race, color and national origin	• Provides protection on the basis of national origin	• Provides the right for non-English persons to communicate with government
• Focuses on eliminating discrimination in federally funded programs	• Focuses on providing LEP persons with meaningful access to services using factor criteria	• Focuses on providing alternative language service at public counters
• Annual Accomplishment and Upcoming Goals Report to FHWA	• Annual Accomplishment and Upcoming Goals Report to FHWA	• Requires a biennial language survey to the State Personnel Board

# requirements for all programs

## Division/District Responsibility

The EO directs recipients of Federal financial assistance to take reasonable steps to provide LEP individuals with meaningful access to their programs, activities and services.

The following chart, although not exhaustive, illustrates divisions/districts and Title VI Program activities and responsibilities relative to LEP services.

<i><b>Activity</b></i>	<i><b>Responsibility</b></i>	
	District/Division	Title VI Program
• Assessing and addressing the needs of eligible persons	X	
• Taking reasonable steps or ensuring that responsible steps are taken to ensure meaningful access	X	
• Developing and implementing monitoring control mechanisms to ensure delivery of service and ongoing compliance	X	
• Compliance, monitoring and oversight	X	X
• Providing technical assistance and guidance		X
• Reporting accomplishments and goals	X	

The key to providing meaningful access for LEP persons is to ensure effective communication exists between the service provider and the LEP person. To accomplish effective communication, the following actions and discussions are considered appropriate at a division/district level:

1. Perform a needs assessment.
2. Provide for oral language assistance.
3. Notify LEP customers of the availability of language assistance services.
4. Translate vital documents in languages other than English.
5. Train staff.
6. Develop written procedures.
7. Monitor and evaluate access to language assistance.

### **1. Perform a needs assessment**

Each division/district is to continuously assess language assistance needs of the population to be served by identifying the following:

- Languages likely to be encountered and number of LEP persons in the eligible population likely to be directly affected by its program.
- Public contact where languages assistance is needed.
- Resources needed to provide effective language assistance, including location, availability and arrangements necessary for timely use.

# requirements for all programs

## **2. *Provide for oral language assistance***

Providing LEP persons with oral language assistance at public service counters or when telephone contact is appropriate. Such assistance may take the form of bilingual staff, contracting with an outside interpreter service or the use of voluntary community interpreters who are skilled and competent in interpreting.

Employment of bilingual staff in divisions and programs is recommended, when feasible, where the percentage of LEP customers or potential customers is statistically significant or where the frequency of contact with such persons will provide for efficient and effective communication. A decision to employ bilingual staff should be based on a needs assessment with due consideration given to budget constraints and in accordance with department policy. The Division of Human Resources can provide additional information on bilingual staff recruitment, bilingual pay procedures, department positions requiring bilingual skills and names and locations of staff that speak an alternative language and language spoken.

## **3. *Notify LEP customers of availability of language assistance services***

LEP persons have the right to language assistance at no cost to them in their spoken language. Divisions/districts are responsible for informing the public of this right. Language identification cards or posting signs in public areas are methods that can be used to provide notice of the service.

## **4. *Translation of vital documents in languages other than English***

It is appropriate to have written materials that are routinely provided in English to applicants, customers and the general public translated into languages that are regularly encountered. The translation of vital documents into languages other than English is particularly important where a significant number or percentage of the customers served and/or eligible to be served have limited English proficiency. Written materials include electronic documents and web-sites.

“Vital Documents” are documents that convey information that critically affects the ability of the recipient/customer to make decisions about his/or her participation in the program. Examples of vital documents include but are not limited to: applications, public notices, consent forms, letters containing important information regarding participation in a program, eligibility rules, notices pertaining to the reduction, denial or termination of services or benefits, right to appeal, notices advising of the availability of language assistance and outreach and community education materials. It is recommended that divisions/districts develop criteria for deciding which documents are vital thereby subject to translation.

Translating documents for LEP to a fourth (4<sup>th</sup>) grade literacy level ensures the targeted audience understands the information. Community based organizations or focus groups can assist with testing translations for language and literacy level appropriateness.

# requirements for all programs

## **5. Train Staff**

Training staff on policies and procedures of language assistance and how to determine whether a customer needs language assistance services is essential to bridging the gap between policies and actual practices. Training should include how to obtain language assistance services and communication with interpreters and translators. Because LEP persons can file a complaint on the basis of national origin, staff should be trained on how to properly handle a Title VI complaint. Refer to the Complaint Handling appendix.

## **6. Develop written procedures**

To implement a successful language assistance program, provide guidance to employees through written procedures that address the following:

- a. Identifying and assessing language needs
- b. Oral language assistance; including vendor charges for services, procedures on how to access and to request Department translation assistance
- c. Written translation of materials and publications
- d. Oral and written notification of the availability of language assistance
- e. Staff training on language service provision
- f. Monitoring access to language assistance

## **7. Monitor and evaluate access to language assistance**

Monitoring and evaluating accessibility and quality of language assistance needs of LEP persons ensures that LEP persons can meaningfully access programs and activities and is the responsibility of the divisions/districts. At a minimum, divisions/districts should conduct an annual assessment to determine: the current LEP composition of its service area; the current communication needs of LEP persons; whether existing assistance meets LEP needs; whether staff is knowledgeable about policies and procedures and how to implement them; and whether sources of and arrangements for assistance are still current and viable. One mechanism for monitoring is to seek feedback from customers and advocates.

Data collection and record keeping are key to an effective monitoring and compliance system. Analysis of data collected provides an overview of how services are provided. Data collection mechanisms include the following, however keep in mind that when collecting data on race or ethnicity, this information is voluntary and should not include personal information such as name, address or phone number:

- Race of LEP person
- Ethnicity of LEP person
- Primary language of the population in the program service area
- Primary language of customers served
- Data upon which the division based language needs assessment
- Number of LEP persons, by language group, who received language services



# requirements for all programs

## LEP Criteria

Following are factors for divisions/districts to consider when determining what reasonable steps to take to provide LEP individuals with meaningful access to its programs, activities and services.

- A factor in determining the reasonableness of a division's/district's efforts is the number or proportion of people who will be excluded from the program or activity absent efforts to remove language barriers.
- Consider the frequency of contact. Title VI obligations will differ for divisions/districts who have little contact with individuals who are LEP compared to a program/division who serves a large LEP population.
- Consider the available resources. A larger division/district with extensive resources may have to take greater steps than a smaller recipient with limited resources. On the premises translators may be appropriate in some circumstances, however, written translation, access to centralized interpreter language lines or other means, may be appropriate in other situations.
- Costs must be factored into this balancing test as part of the consideration of "resources available." "Reasonable steps" may cease to be reasonable where the costs imposed substantially exceed the benefits in light of the factors outlined in the U.S. Department of Justice (DOJ), LEP Guidance.

## Guidance/Resources

The guidance documents and their resource listed below are provided to assist divisions/districts with implementing LEP requirements and may be used in conjunction with this LEP Guidance Document.

- The U.S. Department of Transportation Guidance to Recipients on Special Language Services to Limited English Proficient Beneficiaries, Federal Register/Vol. 66, No. 14/Monday, January 22, 2001.  
*(Refer to the Civil Rights Title VI Program Resource Directory, Tab 29.)*
- The U.S. DOJ Policy Guidance, Enforcement of Title VI of the Civil Rights Act of 1964-National Origin Discrimination Against Persons With Limited English Proficiency, Federal Register/Vol. 65, No. 159/Wednesday, August 16, 2000  
<http://www.usdoj.gov/crt/cor/>
- U.S. Department of Justice Clarifying Memorandum, dated October 26, 2001  
<http://www.usdoj.gov/crt/cor/lep/Oct26BackgroundQ&A.htm>
- State Personnel Board  
*Bilingual Services Program (916) 651-9017*
- United States Census 2000 Language Identification Flashcard  
*(Refer to sample in LEP DOT Guidance appendix.)*



# requirements for all programs

## ***Technical Assistance***

The Civil Rights Title VI Program is responsible for providing divisions/districts with technical assistance. This includes advising divisions/districts of LEP requirements and its implementation and assistance in developing individual program plans and mechanisms. The Office of Human Resources is responsible for providing policy direction regarding bilingual translation services.

## ***Compliance and Enforcement***

Deputy Directors and District Deputy Directors are responsible for ensuring that meaningful services to LEP persons are provided in their respective divisions and districts. Additionally, designated PAA and District Title VI Liaisons will continuously monitor their respective divisions/districts to ensure LEP requirements are fulfilled and report annual accomplishments and upcoming goals relating to LEP activities to the Civil Rights Title VI Program.

In determining whether LEP compliance is met, the Title VI Program will assess whether the division's/district's procedures allow LEP persons to overcome language barriers and participate in a meaningful way in the division's programs, activities and services. The division's/district's appropriate use of methods and options detailed in this LEP Guidance document including analysis and documentation will be viewed as evidence of intent to comply with LEP requirements and Title VI of the Civil Rights Act of 1964.

**Data Collection** 23 CFR 200.9 (4) (b) (4), 771.111 (h) (ii); 28 CFR 42.406; 49 CFR 21.9, 450; NDA; Urban Mass Transportation Administration (UMTA) Circular 4702.1

The diversity of California's population reflects change and should be updated with the latest Federal Census figures. It is critically important that the Department and its subrecipients be innovative in engaging historically under represented public populations and businesses in the planning, project development and maintenance processes. According to the California Department of Finance in 2001, the race/ethnic mix of California is 49 percent White; 31 percent Hispanic; 12 percent Asian and Pacific Islanders; 7 percent Black and one percent American Indian. In the fall of 2001, Census 2000 reflected that California crossed the threshold of no race/ethnic majority.

The Nondiscrimination Agreement between the FHWA Division Administrator and the California Department of Transportation obligates the Department to collect statistical data (race, color, national origin, sex, disability and age) of participation in and beneficiaries of the program and activities conducted by the Recipient.

Data collection is key to ensuring that transportation programs, services, facilities and projects effectively meet the needs of "**all persons**" without discrimination; i.e., disproportionately benefiting or harming one group over another is a violation of

# requirements for all programs

Title VI. Timely and accurate data allow for better decision making and provide support and defensibility to the decisions made.

## ***Why collect data:***

The Code of Federal Regulations 23, Ch.1, Part 200.9 (b. State Actions) (4) requires the State “develop procedures for the collection of statistical data of participants in and beneficiaries of State highway programs; i.e., relocates, impacted citizens and affected communities.” The Nondiscrimination Agreement between the FHWA Division Administrator and the Department Director assures the Department will collect statistical data (race, color, national origin, sex, disability and age) on participation in and beneficiaries of the program and activities conducted by the Department. In addition, data collection provides measurable evidence of the Department’s performance as it relates to Title VI for annual reports to the FHWA and the Department’s efforts to ensure compliance with Title VI.

## ***Objective data is necessary to identify:***

1. Transportation needs of all persons within boundaries of plans or projects.
2. **Impacts** and **persons** impacted.
3. Persons to include in the decision making process.
4. “Champion(s)” for various modes and transportation options.
5. Strategies to address impacts.
6. Alternatives to modes and locations and types of facilities (transit, light rail, van and carpooling, HOV lanes, etc.).
7. Priorities for investments.
8. Sources for financing investments.
9. Strategies to disseminate information.

Based on Title VI implementing regulations, each division/district is required to:

1. Provide for the collection of data and information to permit effective enforcement of Title VI.
2. Collect data about beneficiaries.
3. Analyze the data and information collected.
4. Eliminate discrimination when it is found.
5. Take affirmative measures to ensure nondiscrimination.

## ***What types of data and analysis:***

As the Nondiscrimination Agreement stipulates, data with regard to race, color, national origin, sex, disability and age is collected. See the LEP section for detailed discussion on national origin data collection.

# requirements for all programs

Types of data helpful in determining compliance with Title VI and Environmental Justice (EJ) considerations:

<b><i>Data:</i></b>	<b><i>Analysis of:</i></b>
<b><i>Population:</i></b>	<ul style="list-style-type: none"> <li>• Regional population and growth rates.</li> <li>• Regional ethnic composition.</li> <li>• Age distribution by race.</li> <li>• Number of households by income group.</li> <li>• Median household by income.</li> <li>• Percent of persons below poverty line.</li> <li>• Percent of persons by age group with mobility limitations.</li> <li>• Percent of elderly persons.</li> <li>• Language(s) spoken.</li> <li>• Percent of disabled by types of disability.</li> </ul>
<b><i>Mode Choice:</i></b>	<ul style="list-style-type: none"> <li>• Number of trips per capita.</li> <li>• Percent of households with no automobiles.</li> <li>• Percent by households by income groups using various modes of transportation (e.g., bus, carpool, commuter rail, urban rail, automobile).</li> <li>• Percent of persons by ethnic, gender and disability group using various modes of transportation (e.g., bus, carpool, commuter rail, urban rail, automobile).</li> </ul>
<b><i>Transportation System:</i></b>	<ul style="list-style-type: none"> <li>• Transportation system congested.</li> <li>• Delay as a percentage of travel time.</li> <li>• Travel time.</li> <li>• Exposure to transportation hazards (environmental, safety, crime).</li> <li>• Access to jobs, churches, synagogues, mosques, medical care, schools, emergency services, grocery stores, family.</li> </ul>
<b><i>Employment:</i></b>	<ul style="list-style-type: none"> <li>• Present and future location of jobs.</li> <li>• Present and future location of housing.</li> <li>• Present and future location of low-income communities.</li> </ul>
<b><i>Other:</i></b>	<ul style="list-style-type: none"> <li>• Public investment per capita (Federal, State and local).</li> </ul>

## ***Analysis***

Types of analysis to address compliance with Title VI:

1. Percent of benefits allocated to persons below poverty line vs. persons above poverty line.

# requirements for all programs

2. Distribution of benefits (dollars, facilities, systems, projects) by groups and communities.
3. Impact of investments on income, race, gender, disability and age groups.
4. Allocation of funds by mode (highway, bus, commuter rail, urban rail).
5. Projected population increases versus planned facilities and types of facilities.
6. Language needs assessment.

## ***Types of Performance Indicators***

1. ***Mobility***—Ease of movement of people and goods.
2. ***Accessibility***—Access to opportunities (jobs, medical care, emergency services, family, shopping, entertainment).
3. ***Environment***—Sustainable development and preservation of the existing system and the environment.
4. ***Cost-effectiveness***—Maximized return on investment, direct as well as indirect costs associated with air pollution, congestion delay for individuals/businesses.
5. ***Reliability***—System reliability. (Probability of arriving at destination or even making the trip.)
6. ***Safety***—Physical design and operation of system (measured in accidents per person mile) also includes security related to criminal activities on highways as well as on transit systems.
7. ***Equity***—Transportation investments and benefits are invested in a manner that meets the needs of all persons.
8. ***Customer Satisfaction***—Increased ability to make trips, improved travel time, safety and security, improved access to system.
9. ***Livable Communities***—Enhancement of living conditions for communities through transportation policies that provide multi-modal options including non-motorized modes.

## ***Where to collect data:***

Potential sources of data and analysis tools:

1. Census Data
2. School Districts
3. Transit Ridership Surveys
4. Management Systems (Pavement and Congestion)
5. Land Use Plans
6. Geographic Information Systems
7. Transportation Models
8. Metropolitan Planning Organization Committees (e.g., Citizen Advisory Committees)

# requirements for all programs

## **How to collect data:**

Each division/district develops a process to collect data for the following basis:

- RACE<sup>1</sup>:
  - White
  - Asian
  - American Indian/Alaskan Native
  - Native Hawaiian/other Pacific Islander
  - Black or African American
  - Hispanic/Latino
- NATIONAL ORIGIN:
  - Born in United States, Puerto Rico, Guam, the U.S. Virgin Islands, Northern Marianas or
  - Born abroad of American parent/s
  - Born outside United States, Puerto Rico, Guam, the U.S. Virgin Islands or Northern Marianas
- DOES THIS PERSON SPEAK A LANGUAGE OTHER THAN ENGLISH AT HOME?
  - Yes  
What is the language?\_\_\_\_\_
  - No
- SEX:
  - Male
  - Female
- DISABLED:
  - Yes
  - No
- AGE: \_\_\_\_\_

How to present/allocate multiple race responses is addressed in Office Management and Budget Bulletin No. 00-02. (Refer to Data Collection appendix.)

All of the data collection considerations above apply directly to Department programs and when administering new or renewal contracts or applications for grants, permits or loans, an oversight perspective of your subrecipients must be recognized and applied.

For additional information regarding data collection, refer to the appendix on this subject.

<sup>1</sup> Office of Management and Budget Bulletin No. 00-02 establishes multiple race response is acceptable

# requirements for all programs

In addition, the U.S. Department of Justice regulations, Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs and examples of data and information which, to the extent necessary and appropriate for determining compliance with Title VI, include the following:

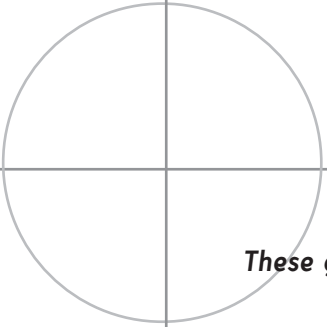
1. The manner in which services are or will be provided and the related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination.
2. The population eligible to be served by race, color, national origin, sex, disability and age.
3. Data regarding covered employment, including use or planned use of bilingual public-contact employees servicing beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English.
4. The location of existing or proposed facilities connected with the program and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any persons on the basis of prohibited discrimination.
5. The present or proposed membership, by race, color, national origin, sex, disability and age, in any planning or advisory body which is an integral part of the program.
6. Where location is involved, the requirements and steps used or proposed to guard against unnecessary impact on persons on the basis of race, color, national origin, sex, disability or age.

Additional data, such as demographic maps, the racial composition of affected neighborhoods or census data, may be necessary or appropriate for understanding information requirements listed above. This type of data is required, however, only to the extent that it is readily available or can be compiled with reasonable effort.

The Legal Office, Office of Equal Opportunity and the Title VI Program must be promptly notified of any lawsuit filed against your program and its subrecipients alleging discrimination on the basis of race, color, national origin, sex, disability or age.

For additional information regarding data collection, refer to the appendix on this subject.

[emphasis programs]



*These guidelines emphasize the planning and project delivery processes of the State transportation system and are in accordance with FHWA requirements. Particular emphasis will be placed on five program areas: Planning, Environmental, Right of Way, Construction and Research. Supporting guidance on Authorities, Definitions, Glossary of Terms, Preventing Discrimination in the Federal Aid Program, Public Notice, Public Involvement, Contract/Grants/Permits/Loans Assurances, Complaint Handling, Annual Report Format, Data Collection, Native Americans, LEP DOT Guidance and Resources can be found in the appendix section of the Guidelines.*

## emphasis programs

*The discussions that follow have been developed to address primary areas of concern regarding compliance with Title VI requirements by program. The Emphasis Programs must consider and integrate them into their processes/procedures, activities and services. In addition to these requirements, the considerations and requirements discussed in the “Requirements for All Programs” section must also be integrated.*





# the planning process

*The statewide transportation planning process and metropolitan planning process produce long-range intermodal statewide transportation plans and short-range programs of projects. The decision making effort for these processes is open for input from a variety of participants. The short-range program of projects must include at least all projects proposed to be funded by the FHWA or the FTA.*

*Long-range plans frame the State's long-range transportation goals and objectives for the State (i.e., "California Transportation Plan") and or region. Projects should be identified and programmed on the State Transportation Improvement Program (STIP), the State Highway Operations Protection Program (SHOPP), the California Transportation Plan (CTP), the Interregional Transportation Strategic Plan (ITSP), the District System Management Plans (DSMPs) and Regional Transportation Plans (RTPs) and ultimately implemented. The projects implemented from the STIP should be consistent with the goals and objectives identified in the long-range plan. The STIP projects are developed in a multi-year cycle.*

*It is important for the Department and the transportation planning agencies to provide opportunity for active involvement of Tribal Governments, minority, low-income, elderly and disabled populations in statewide and metropolitan transportation planning and programming. It is important to recognize and be sensitive to tribal customs and to the nationally recognized sovereignty of Tribal Governments. Tribal Governments are independent government bodies rather than a minority group. Refer to the appendix on Native Americans for additional guidance on working with Native American Communities.*

## Potential Title VI Issues

Plans and programs have the potential of being discriminatory in more subtle ways than projects. The major area of impact by plans and programs is through decisions that identify one or more planned improvements over other options. This consequence may result from procedures and processes that unintentionally exclude a group from the process or from the failure to consider the impacts of various transportation system alternatives and programs of projects on one or more identified groups. To the extent that plans and programs include proposed improvements with disproportionate beneficial impacts or reflect decision making processes that exclude certain groups, the long-

# the planning process

term agenda for transportation improvements may be inappropriately biased. This could lead to project implementation that is inconsistent with nondiscrimination requirements. The actual impacts may only be experienced as projects are implemented. The planning process represents a comprehensive perspective from which transportation agencies assess the potential consequences of developing and operating the transportation system. The planning process should consider, as applicable, whether:

1. There is effective public involvement/participation based on the use of Performance Measures and demographic analysis.
2. Input from minority groups/persons is seriously being considered.
3. There is consultation with Tribal Governments in statewide and metropolitan transportation planning.
4. Data collection and analysis is sufficient to support decisions.
5. Social, economic and environmental effects and impacts have been identified and described.
6. Minorities, women, community based organizations and Tribal Governments have been provided an opportunity to successfully compete for planning studies, corridor studies or other work.
7. Title VI requirements have been included in contract and grant language.
8. When awarding a contract or grant, whether the contractor or applicant has any unresolved Title VI violations.
9. Alternative languages, other than English, are needed to effectively communicate with the eligible population.
10. The Program Area Administrator and/or District Title VI Liaison have reviewed and commented on policies and plans from a Title VI perspective.

## **Recommended Good Practices and Mitigation Measures**

1. Incorporate Title VI requirements into policies and procedures.
2. Encourage and seek participation from those most directly impacted.
3. Contact minority community leaders, organizations and media. Develop a contact database.
4. Conduct adequate number of meetings and hearings.
5. Establish and participate on civic advisory committees.
6. Set appropriate meeting location, time, day of week, language needs and atmosphere to reach the target group.
7. Demonstrate consideration of community input via newsletters, letters, leaflets or other printed medium that will potentially reach the target group/audience.

# the planning process

- 8.** Establish effective relationships with Tribal Governments and non-federally recognized tribal groups and organizations.
- 9.** Conduct training on American Indian customs and laws that govern their various sovereign nations.
- 10.** Develop data collection methods designed to obtain the following information:
  - Description of community boundaries,
  - Demographic composition, including racial/ethnic makeup, income levels and age (seniors/youths),
  - Tax base,
  - Populations with disabilities and
  - Community services, schools, hospitals, shopping centers, public safety.
- 11.** Focus on outreach so that minority, disabled and women-owned firms have an opportunity to compete for work.
- 12.** When giving presentations at community workshops, put graphics, slides, etc. in applicable languages. Attempt to include and describe processes and community interactions in ways that translated words cannot.
- 13.** Communicate with other transportation entities to determine what outreach methods are being used and consider alternative methods to enhance attendance at meetings.
- 14.** In cooperation with other transportation entities, provide technical assistance.
- 15.** Treat everyone equitably.
- 16.** To ensure opportunity for full participation and accommodation for persons with disabilities, every meeting or notice of a meeting should:
  - a.** Be held in a totally accessible facility;
  - b.** Contain a statement on how to request alternative format documents and assistive services, if you are an individual with a disability requiring such services;
  - c.** Give consideration to accessible alternatives such as videos, if captioning is not included on the tape, such as using interpreters; or a script of the video in Braille for those who are deaf and blind, for example upon request.
- 17.** Insure that persons with hearing impairments are accommodated in the most effective manner possible, whether that is via sign language interpreter, real-time captioning or not using the video if they would not be able to participate in receipt of the information via that method.
- 18.** Develop glossaries of planning terms in other languages for limited English proficient purposes.

# the planning process

19. Public service announcements to be closed captioned as required by Americans with Disabilities Act.
20. Contact minority businesses annually and inform them of the procurement process.

## Possible Compliance Review Questions

Recent regulations on metropolitan and statewide planning draws attention to overall strategies and goals, service equity and public involvement. The questions below are adapted from the *Policy Guidance Concerning Application of Title VI of the Civil Rights Act of 1964 to Metropolitan and Statewide Planning, 23CFR Parts 450 and 771 and 49CFR Parts 619 and 622*. These questions focus on public involvement strategies for minority and low-income populations, assessment of the distribution of benefits and adverse environmental impacts at the planning and project stages. Programs will be expected to provide a written response to these questions in advance of the Title VI Program Compliance Review.

### A. Strategies and Goals

1. What strategies and efforts has your planning process developed for ensuring, demonstrating and substantiating compliance with Title VI?
2. What measures have been used to verify that the multi-modal system access and mobility performance improvements, included in the plan and Transportation Improvement Program (TIP), Regional Transportation Improvement Program (RTIP), Interregional Improvement Program (ITIP) and the underlying planning process, comply with Title VI?
3. Has your planning process developed a demographic profile of the State that includes identification of the locations of socioeconomic groups, including low-income and minority populations as covered by the Executive Order on Environmental Justice and Title VI provisions? Describe how.
4. Does your planning process seek to identify the needs of low-income and minority populations? Describe how.
5. Does your planning process seek to make use of demographic information to examine the distributions across these groups of the benefits and burdens of the transportation investments included in the plan and TIP?
6. What methods are used to identify imbalances?

### B. Service Equity

1. Does your planning process have an analytical process in place for assessing the regional benefits and burdens of transportation system investments for different socioeconomic groups?
2. How does the planning process respond to the analysis produced?

# the planning process

## **C. Public Involvement**

1. Provide a copy of your public involvement process policy. Is there at least a 45-day public comment period before the process or revision is adopted?
2. Is information about transportation issues and processes provided timely to citizens, public agencies, transportation agency employees, private sector transportation providers and others affected by transportation plans, programs and projects? Describe how.
3. Does the public have access to technical and policy information used to develop plans and the TIP and to public meetings where Federal-aid highway and transit programs are considered? Describe how.
4. Is advance public notice given, at least 30 days, for public review and comment on key decisions, including approval of plans, TIPS and amendments? Describe how.
5. Are explicit considerations and responses offered to public input received during the planning and program development stages? Describe how.
6. Are the needs of low-income and minority households taken into account? Describe how.
7. Does the public outreach effort use media such as print, television, radio, etc. targeted to low-income or minority populations?
8. Has your program made funds available to local organizations that represent low-income and minority populations to enable their participation in the planning process?
9. Are Tribal Governments and related public agencies on public or tribal land involved in the development of transportation plans and programs? Describe how Tribal Governments are involved in the planning process, and what considerations are given to Indian reservation roads.
10. When significant written or oral comments are received on the draft transportation plan, financial plan or TIP, as a result of the public involvement process, is a summary analysis and report of the disposition of the comments made part of the final plan and TIP?
11. What changes have occurred as a result of input by public involvement, specifically low-income and minority populations?
12. Is the public involvement process reviewed periodically to determine the effectiveness of full and open access to all? Describe how.
13. Is the district public involvement process coordinated with the statewide public involvement processes wherever possible to enhance the consideration of public issues, plans and programs and to reduce redundancies of costs? Describe how.
14. Describe the types of assurances utilized to assure that no one has been excluded from participation in or denied benefit of or otherwise subjected to discrimination on the basis of race, color, sex, national origin or physical handicap for any program receiving assistance from the USDOT.



# the planning process

15. Describe actions taken to comply with the Americans with Disabilities Act.
16. Are traffic, ridesharing, transportation safety and enforcement agencies including the County Transportation Commissions, commuter rail operators, airport authorities, private sector transportation providers and city officials involved in your planning? Describe how.
17. Are local, State and Federal environmental, resource and permit agencies involved in your planning? Describe how.
18. Have there been any changes in your public involvement processes since your last review? If so, what are they?
19. Were there any planning studies undertaken during the last two years, which specifically addressed the needs of minority and or low-income populations? If so, identify.
20. Describe what kinds of demographic data, including race and income, is collected.

## **D. Hearings**

1. What statistics are kept on public hearing participation by race and gender? Visual identification?
2. Are minority group concerns addressed in a timely manner? Describe how.
3. Are public meeting announcements made available in languages other than English, according to the affected minority population? Describe how and provide an example.
4. Are accessible locations (geographically and structurally), appropriate times and translation services planned for and provided during public hearings?

## **E. Contracts**

1. Does your division/district advertise? Describe the process.
2. How does your program promote the participation of Disadvantaged Business Enterprises (DBE) contracts?
3. Are DBE goals set and do you meet those goals?
4. Who in the program monitors the contractor's adherence with the Title VI requirements?
5. Provide a copy of your approved DBE plan.
6. Provide the number, dollar values and types of contracts and funding sources used during the last two fiscal years. Identify if there were any DBEs on the contracts.

## **Administration**

### **A. Management Staff Composition**

1. Provide a staffing composition listing by position, race and gender. Include an organizational chart.
2. Policy and Advisory Committees – Provide a staffing composition listing of committees and their respective members by position, race and gender.

# the planning process

3. Describe, in summary, the programs administered by the Transportation Planning Program.

## **B. Complaint Procedure**

1. What process do you follow when handling Title VI complaints and how are your customers made aware of this process?
2. How many Title VI related complaints have you received in the past two years? What was the outcome of those complaints?

## **C. Training**

1. Has staff received formal or informal training regarding Title VI of the Civil Rights Act of 1964 and/or Environmental Justice Executive Orders? Please describe.
2. What is your schedule for Title VI training this year and who will attend?

## **D. Status of Title VI Program with the FTA**

1. Provide a copy of your most recent FTA Title VI program submission. What date was it approved and what date does it expire?
2. Did FTA make changes, comments or additions prior to approval? If so, in what areas?

## **Self Monitoring**

1. What office or section within the planning function has lead responsibility for Title VI matters?
2. What process has been implemented to ensure Title VI issues are addressed in the planning process?
3. How do MPOs obtain representation in their membership reflecting the diversity of the population they serve?
4. How does your program ensure that MPOs solicit and consider the views of all groups within the population in the planning of highway projects?

## **FTA Triennial Reports**

23 CFR 450.334, 200.13; 49 CFR 21;  
NDA; UMTA Cir.4702.1

The Division of Transportation Planning, Office of Regional and Interagency Planning administers Federal pass through planning funds. These funds are available to both MPOs and regional planning agencies. Pursuant to Urban Mass Transportation Act circular 4702.1, all recipients of planning funds must meet either General Program Requirements or Emphasis Programs requirements once every three years. In addition, MPOs within service areas with populations over 200,000 must comply with both the General and Emphasis Programs requirements. The Office of Regional and Interagency Planning compiles the responses from the MPOs and regional transportation planning agencies and submits a report to the FTA with a copy to the Title VI Coordinator.



*The term project development process refers to the process of a highway or transit project in which the environmental study necessary for the National Environmental Policy Act (NEPA) compliance is performed. During this process, data and information on project alternatives and related environmental effects are collected and analyzed. The goal of this process is to develop a complete understanding of the existing and future environmental conditions and the possible effects of a proposed project in order to make the best project decision in terms of meeting the intended transportation need, the goals of an area or community and for protection and enhancement of the environment.*

*The project development process includes environmental, right of way, construction and research. Narrative discussion on these programs include: Potential Title VI Issues, Recommended Good Practices and Mitigation Measures, Possible Compliance Review Questions and Self Monitoring.*

## Environmental

23 CFR 200, 771; 49 CFR 21

*The environmental process, although complex and fluid, is an integral part of the project development process. It is the Department's policy to evaluate the environmental benefits and consequences of its activities and implement practices that minimize environmental impacts; a systematic interdisciplinary approach is used to identify and evaluate environmental issues and problems. The resulting documentation can take many forms depending upon the laws and regulations under consideration and the complexity of the impacts.*

### Potential Title VI Issues

The environmental study of project alternatives and impacts must include the consideration of mitigation measures for unavoidable impacts. Mitigation measures and other agreements that are made as part of the decision making process must be documented and implemented. Environmental commitments, such as noise barriers, joint-use facilities, replacement housing, protection of cultural resources and others should be monitored to assure that these mitigation measures are included in the design plans and the construction of the project. The environmental process should consider, as applicable, whether:

1. Public information was adequately solicited and seriously considered.
2. Social, economic and environmental (SEE) impacts were adequately identified and documented.
3. The potential for disproportionate or discriminatory impacts has been adequately addressed.
4. Beneficial impacts, such as increased access to facilities/services and upgrading of affected communities, have been identified.
5. The following disparate or disproportionate impacts have been identified:
  - Diminished access to facilities/services;
  - Disruption of community cohesion;
  - Disruption of people, businesses and farms;
  - Changes in tax base and property values;
  - Traffic Noise;
  - Relocation of residences and businesses;
  - Diminished quality of the water, air or natural environment used by residents.
6. The potential for the discovery and protection of cultural resources has been adequately identified and addressed with Tribal Governments and other Native American communities and individuals.

## **Recommended Good Practices and Mitigation Measures**

1. Restoration of circulation and pedestrian patterns for disrupted communities.
2. Provisions of relocation assistance and advisory services, replacement housing and payments for moving displaced families and businesses.
3. Provisions for maximum retention of existing trees and shrubs included in grading plans for ramp areas and along right of way.
4. Provision for last resort housing.
5. Provision of traffic control.
6. Improvements in traffic signalization and street lighting.
7. Establishment of priorities for employment, training and contracting opportunities for residents of the affected community.
8. Provision of noise barriers and buffer zones.
9. Provision of landscaping.
10. Functional replacement of publicly-owned facilities displaced by the project.

11. Coordination with community development agencies to implement jointly funded initiatives.
12. Develop a public involvement program during the concept scoping planning stage and continue during the project development process. Utilize public involvement techniques to identify issues of potential discrimination as early as possible in the project development processes to meet the needs of a particular community (e.g., minority, disabled, elderly).
13. Use newsletters, speakers bureaus and media to provide a consistent flow of information on project development status.
14. Provide opportunity for public hearing after release of the Draft Environmental Impact Statement (DEIS) or Environmental Assessment.
15. Focus outreach on appropriate (target) community to ensure involvement.
16. Use informal contact, which is more effective than a formal atmosphere for a public hearing.
17. Experiment with informal open forum public hearing formats; allowing one-on-one comments to a recorder.
18. Develop mitigation and enhancement strategies based on public involvement and agency coordination.
19. The project team should become aware of other actions that have occurred in the impacted area and how these actions were perceived by members of the community.
20. The project team should study avoidance, minimization, mitigation and enhancement strategies when working with the affected community on the specifics as a definite proposal begins to take shape.
21. Community impact assessments should include compilation and analysis of demographic data including breakdowns by characteristics protected under Title VI and related statutes; race, color, national origin, sex, disability and age. Also, consider the impacts to minority and/or low-income populations.
22. Tribal Governments and Native Americans are properly consulted for the identification and protection of cultural resources, and the proper mitigation is in place.
23. Tribal Governments are consulted to ensure mitigation of environmental issues that might impact their communities.

## Possible Compliance Review Questions

### Administration

#### A. General

1. What office or section has the lead responsibility for Title VI matters?
2. What is the process followed whenever a new directive is issued?

# environmental

3. Is your Program Area Administrator (PAA) involved in policy development?
4. When awarding a contract, grant, loan or permit, what mechanism is used to ensure that the contractor or applicant does not have any unresolved Title VI violations?
5. What is the role of the PAA and/or key personnel in the environmental stage?  
Please describe for each area below:
  - Public Involvement and citizen advisory committees,
  - Scheduling time and location of public meetings and hearings,
  - Identification of impacts,
  - Identification of mitigation measures,
  - Environmental assessments,
  - Analysis,
  - Consideration of alternative with respect to corridors and locations.
6. Who is responsible for identifying Title VI issues in the environmental documents of proposed projects?
7. Are there any Tribal Governments in the project area; if there are, have they been consulted regarding projects?
8. What measures have you taken to identify cultural resources? If cultural resources have been identified, or a Reservation or Rancheria is to be impacted, was the proper Native American community, individual or Tribal Government notified to ensure proper mitigation measures?

## **B. Management Staff Composition**

1. Provide a staffing composition listing by position, race and gender. Include an organizational chart.
2. Policy and Advisory Committees – Provide a staffing composition listing of committees and their respective members by position, race and gender.
3. Provide a listing of persons who are designated to provide alternative language assistance and identify what languages they translate.

## **C. Complaint Procedure**

1. Provide a copy of the procedure your program uses to handle a Title VI complaint. How are your customers made aware of this process?
2. How many Title VI related complaints have you received in the past two years? What was the outcome of those complaints?
3. How are Title VI complaint procedures disseminated to program personnel?

## **D. Training**

1. Has staff received formal or informal training regarding Title VI of the Civil Rights Act of 1964 and/or Environmental Justice Executive Orders? Please describe.
2. Do you have a schedule for Title VI and related statutes training this year? If yes, please provide the schedule and who will attend?

## **E. Data Collection & Monitoring**

1. Do you conduct self monitoring within the Division of Environmental Analysis? If yes, what programs and how? If not, why not?
2. What process does the program use to self monitor data collection and contract/grant language requirements?
3. What data (race, color, national origin, language considerations, sex, disability and age) do you maintain that reflects the extent to which members of minority groups are beneficiaries of your program?
4. What records and/or reports are maintained which specifically reflect compliance with Title VI?
5. Who is responsible for developing, maintaining and reporting this data?
6. How is this data used?

## **Environmental**

### **Strategies and Goals**

1. Provide a copy of your Strategic Plan and Performance Measure Objective for the current fiscal year.
2. What strategies and efforts have you developed for ensuring, demonstrating and substantiating compliance with Title VI?
3. How do you use the demographic profiles that include identification of the locations of socioeconomic groups, including low-income and minority populations as covered by the Executive Order on Environmental Justice and Title VI provisions? Describe how you developed the profile.
4. Does your process seek to identify the needs of low-income and minority populations? Describe how.
5. Does your process seek to make use of demographic information to examine the distributions across these groups of the benefits and burdens of the transportation investments included in the plan and TIP?
6. What methods are used to identify imbalances?
7. How does the program follow-up to ensure mitigative measures identified for projects significantly impacting minorities are carried through?

# environmental

## ***Social, Economic, Environmental (SEE)***

1. Is an in depth analysis of the SEE effects and impacts identified, described and considered? Describe this process.
2. Does your program follow up on any identified SEE impacts? Please explain.
3. Explain how your program monitors SEE impacts.

## ***Service Equity***

1. Describe, in summary, the programs administered by the Environmental Program.
2. Does your environmental process have an analytical process in place for assessing the benefits and burdens of a transportation system project on different socioeconomic groups?
3. Does it have a data collection process to support the analysis effort? Describe and provide an example.
4. Does this analytical process seek to assess the benefit and impact distributions of the project?
5. How does your process respond to the analysis produced?

## ***Public Involvement***

1. Provide a copy of your public involvement process policy. What is the public comment period before the process or revision is adopted?
2. Is information about environmental issues and processes provided timely to citizens, public agencies, transportation agency employees, private sector transportation providers and others affected by transportation plans, programs and projects? Describe how.
3. Does the public have access to technical and policy information used to develop environmental documents where Federal-aid highway and transit programs are considered? Describe how.
4. Is advance public notice given for public review and comment on key decisions, including approval and amendments? Describe how.
5. Are the needs of low-income and minority households taken into account? Describe how.
6. Does the public outreach effort use media such as print, television, radio, etc. targeted to low-income or minority populations?
7. Has your program made funds available to local organizations that represent low-income and minority populations to enable their participation in the environmental process?
8. What is your process for advertising a Public Notice that your program is an equal opportunity program and/or that Federal law prohibits discrimination?

9. Are Tribal Governments and related public agencies on public or tribal land involved in the environmental process? Describe how Tribal Governments are involved in the environmental process, and what considerations are given to Indian reservation roads.
10. Give an example of what changes have occurred as a result of input by public involvement, specifically low-income and minority populations?
11. Is the public involvement process reviewed periodically to determine the effectiveness of full and open access to all? Describe how.
12. Describe the types of assurances utilized to assure that no one has been excluded from participation in or denied benefit of or otherwise subjected to discrimination on the basis of race, color, sex, national origin or physical handicap for any program receiving federal financial assistance.
13. Describe actions taken to comply with the Americans with Disabilities Act.
14. How does the PAA assist program area personnel in obtaining public involvement?
15. Has the PAA or key program personnel attended public meetings and/or hearings held for projects with potential Title VI impacts? If yes, list the meetings/hearings, whom attended and the outcome(s).
16. What role did the PAA and/or key program personnel play to facilitate participation of historically under represented groups and accessibility to the location of the meetings or hearings?
17. Does the PAA review procedures and efforts made by the programs and MPOs to obtain public involvement, particularly minority citizen participation? If so, please provide examples.

## **Hearings**

1. What statistics are kept on public hearing participation by race and gender? Visual identification?
2. Are minority group concerns addressed in a timely manner? Describe how.
3. Are public meeting announcements made available in languages other than English, according to the affected minority population? Describe how, and provide an example.
4. Are accessible locations (geographically and structurally), appropriate times and translation services planned for and provided during public hearings?

## **Contracts**

1. Who in the program monitors the contractor's adherence with the Title VI requirements?
2. How does your program promote the participation of Disadvantaged Business Enterprises (DBE) contracts?
3. Are DBE goals set and do you meet these goals?

4. Provide the number, dollar values and types of contracts and funding sources used during the last two fiscal years. Identify if there were any DBEs on the contracts.

## Self Monitoring

1. What office or section has the lead responsibility for Title VI matters?
2. How does the program follow-up to ensure mitigative measures identified for projects significantly impacting minorities are carried through?
3. What is the role of the PAA, District Title VI Liaison and/or key personnel in the environmental stage? Be prepared to describe that role in the following areas:
  - Public involvement and citizen advisory committees
  - Scheduling time and location of public meetings and hearings
  - Identification of impacts
  - Identification of mitigation measures
  - Environmental assessments
  - Analysis
  - Consideration of alternatives with respect to corridors and locations.



23 CFR 200, 710; 49 CFR 21, 24

*The Right of Way Program provides property rights for construction of transportation projects in accordance with Title VI of the Civil Rights Act of 1964, the Federal Uniform Relocation Assistance and Real Property Act which require people affected by transportation projects be treated fairly and equitably. These activities require ongoing interaction with the public during all phases of the project particularly in the following areas:*

- *Appraisals*
- *Property Management*
- *Acquisitions*
- *Condemnation*
- *Relocation Assistance Program*

## Potential Title VI Issues

### **Whether:**

1. Selection of comparable sales and rental rates reflects discrimination and stereotypes.
2. Adjustment to the comparable sales and rental properties reflects discrimination.
3. Consistency exists in the determination of severance damages.
4. Every effort was made to negotiate for required property before filing condemnation.
5. Property owners were fully informed of their rights to receive just compensation for their property before any donation of such property.
6. The offer was made for the full amount of the review appraiser's determination of fair market value.
7. Consistency exists in the application of minimum payment of policy.
8. Relocation advisory assistance was provided equitably and without discrimination to the displaced individuals.
9. The selection of comparable replacement housing is fair, consistent and without discrimination.
10. Decent, safe and sanitary inspection standards are consistently applied.
11. Adequacy of personal contacts.
12. The determination of rent amounts is equitable.

# right of way

13. The procurement of bids provides equal opportunity.
14. The maintenance of rental properties on projects is adequate and consistently performed for all tenants.

## Recommended Good Practices and Mitigation Measures

1. Expand the pool of qualified fee appraisers via aggressive outreach.
2. Maximize quality of appraisal reviews (training, selection of fee/staff appraisers; qualified review appraisers.)
3. Ensure the parcel file documents the basis for donations and notification of entitlement to just compensation.
4. Ensure consistency in the implementation of negotiation procedures.
5. Ensure policy is applied uniformly from project to project.
6. Ensure relocation staff are sensitive to the needs of displaced individuals; that feedback obtained from displaced individuals and needs assessment and self-evaluations are conducted.
7. Training, diversification of staff and self evaluations.
8. Aggressive outreach and removal of barriers.
9. Self evaluations, tenant feedback, referral services.

## Possible Compliance Review Questions

### Administration

#### *General*

1. What office or section within the Division of Right of Way has the lead responsibility for Title VI matters?
2. What process is followed when a new directive is issued?
3. Is the division's Program Area Administrator (PAA) involved in policy development?
4. When awarding a contract, grant, loan or permit, what mechanism is used to ensure that the contractor or applicant does not have any unresolved Title VI violations?
5. What is the role of the PAA and/or key personnel in the right of way phase and who is responsible for analysis of the following?
  - Public involvement and citizen advisory committees
  - Scheduling time and location of public meetings and hearings
  - Identification of impacts
  - Identification of mitigation measures

- Relocations
  - Consideration of alternative with respect to corridors and locations
  - Appraisal of properties
  - Negotiation with property owners
  - Acquisition of relations of people and business
  - Adjustment of utilities
6. Who is responsible for identifying Title VI issues in right of way documents of proposed projects?

### ***Staff Composition***

1. Provide a staffing composition listing by position, race and gender for senior level and above classifications. Include an organizational chart.
2. Policy and Advisory Committees - Provide a listing of committees and their respective members by position, race and gender.
3. Provide a listing of persons who are designated to provide alternative language assistance and identify what languages they translate.

### ***Complaint Procedure***

1. Provide a copy of the procedure the division uses to handle a Title VI complaint. How are your customers made aware of this process?
2. How many Title VI related complaints have you received in the past two years? What was the outcome of those complaints?
3. How are Title VI complaint procedures disseminated to program personnel?

### ***Training***

1. Has staff received formal or informal training on Title VI of the Civil Rights Act of 1964, related statutes or policy including Executive Orders on Environmental Justice and Limited English Proficiency? Please describe.
2. Are staff scheduled for Title VI and related statutes training this year? If yes, please provide the schedule and who will attend.

### ***Data Collection & Monitoring***

1. Does the division self monitor its activities to ensure nondiscrimination? If yes, please describe the process(es). If not, why not?
2. What process does the division use to self monitor data collection and contract/grant language requirements?
3. What data (race, color, national origin, language considerations, sex, disability and age) do you maintain that reflects the extent to which members of minority and low-income populations participate in right of way activities or services?

# right of way

4. What records and/or reports are maintained that specifically reflect compliance with Title VI?
5. Who is responsible for developing, maintaining and reporting this data?
6. How is this data used?

## Right of Way

### **Strategies and Goals**

1. Provide a copy of the division's Strategic Plan and Performance Measure Objectives for the current fiscal year.
2. What strategies and efforts has the division developed for ensuring, demonstrating and substantiating compliance with Title VI?
3. Does the division use demographic data that includes identification of the locations of socioeconomic groups, including low-income and minority populations as covered by the Executive Order on Environmental Justice and Title VI provisions? What process is used to identify and define the eligible population?
4. Does the division's process seek to identify the needs of low-income and minority populations? Describe how.
5. What methods are used to identify imbalances?
6. How does the division follow-up to ensure mitigation measures identified for projects significantly impacting minorities are carried through?

### **Service Equity**

1. Describe, in summary, the programs administered by your division.
2. Does the division have an analytical process in place for assessing the benefits and burdens of transportation system projects on different minority and socioeconomic groups? Please describe.
3. Does the division have a data collection process in place that will support the analysis of benefits and burdens? Describe this process and provide an example.
4. How is the analysis of benefits and burdens used?

### **Public Involvement**

1. Provide a copy of your public involvement process policy. What is the public comment period before the process or revision is adopted?
2. Is information about right of way issues and processes provided timely to citizens, public agencies, transportation agency employees, private sector transportation providers and others affected by transportation plans, programs and projects? Describe how.

# right of way

3. Does the public have access to technical and policy information used to develop right of way documents where Federal-aid highway and transit programs are considered? Describe how.
4. Is advance public notice given for public review and comment on key decisions, including approval and amendments? Describe how.
5. Are the needs of low-income and minority households taken into account? Describe how.
6. Does the public outreach effort use media such as print, television, radio, etc. and is it targeted to low-income or minority populations?
7. Has the division made funds available to local organizations that represent low-income and minority populations to enable their participation in the right of way process?
8. What is the division's process for advertising a Public Notice that your program is an equal opportunity program and/or that Federal law prohibits discrimination?
9. Are Tribal Governments and related public agencies on public or tribal land involved in the right of way process? Describe how Tribal Governments are involved in the right of way process and what considerations are given to Indian reservation roads.
10. Give an example of what changes have occurred as a result of input by public involvement, specifically low-income and minority populations?
11. Is the public involvement process reviewed periodically to determine the effectiveness of full and open access to all? Describe how.
12. Describe the types of assurances utilized to ensure that no one is excluded from participation in or denied benefit of or otherwise subjected to discrimination on the basis of race, color, sex, national origin, disability or age from your program's activities and services.
13. Describe actions taken to comply with the Americans with Disabilities Act.
14. What is the role of the PAA in assisting program area personnel with public involvement activities?
15. Has the PAA or key program personnel attended public meetings and/or hearings held for projects with potential Title VI impacts? If yes, give an example and list the meeting/hearing, whom attended and the outcome(s).
16. What role did the PAA and/or key program personnel play to facilitate participation of historically under represented groups and accessibility to the location of the meetings or hearings?
17. Does the PAA review procedures addressing public involvement, particularly concerning minority citizen participation? If so, please provide examples.
18. Please describe the procedures followed when working with external customers who are limited English proficient.

# right of way

## **Hearings**

1. What statistics are kept on public hearing participation by race and gender?  
Visual identification?
2. Are minority group concerns addressed in a timely manner? Describe how.
3. Are public meeting announcements made available in languages other than English, according to the affected minority population? Describe how and provide an example.
4. Are accessible locations (geographically and structurally), appropriate times and translation services planned for and provided during public hearings?

## **Contracts**

1. Who in the division monitors the contractor's adherence with the Title VI requirements?
2. How does the division promote the participation of Disadvantaged Business Enterprises (DBE) contracts?
3. Are DBE goals set and do you meet these goals?
4. Provide the number, dollar values and types of contracts and funding sources used during the last two fiscal years. Identify if there were any DBEs on the contracts.

## **Appraisals**

1. Does the selection of comparable sales and rental properties process identify discrimination and stereotypes? Describe how.
2. What process is used to ensure consistency and nondiscrimination of severance/consequential damages? Please describe.

## **Replacement Housing**

1. Is relocation advisory assistance provided equitably and without discrimination to displaced individuals? Describe how.
2. Describe how the division's process ensures that the selection of comparable replacement housing is fair, consistent and without discrimination?

## **Decent, safe and sanitary housing determinations**

1. Describe how the division's process ensures that decent, safe and sanitary inspection standards are consistently applied.
2. What is the adequate number of personal contacts? Describe this process.

## **Negotiation**

1. What is the process to guarantee consistency in the implementation of negotiation procedures?
2. Is every effort made to negotiate for required property before filing condemnation? Describe how.

## **Compensation**

1. What is the process to ensure that property owners are fully informed of their rights to receive just compensation for their property before any donation of such property?
2. How is consistency in the application of minimum payment policy guaranteed?

## **Last Resort Housing Authorizations**

1. What steps are taken to ensure nondiscrimination in last resort housing authorization process? Describe this process.

## **Property Management**

1. How is the determination of equitable rent amounts made?
2. Does the procurement of bids provide equal opportunity? Describe how.
3. Is maintenance of rental properties on projects adequate and consistently performed? Describe how.
4. Is the management of highway airspace and the disposal of excess property handled equally and equitable? Please explain.

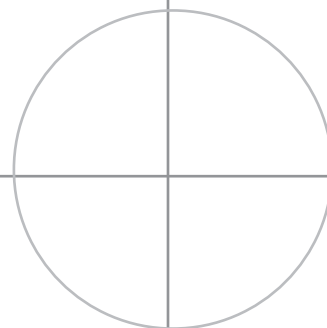
## **Goals for Upcoming Federal Fiscal Year 2002 as submitted by the Division of Right of Way September 2001.**

Please provide a status report on the following goals:

1. Continue with ongoing Title VI training.
2. Have District Title VI Liaisons attend the Civil Rights Title VI training.
3. Continue to be diligent with regard to the distribution of Title VI documents and information.
4. Expeditiously handle any complaints received regarding violation of Title VI policies.
5. Create an appropriate mechanism for gathering data with regard to discrimination during the Right of Way process. District input will be solicited concerning this endeavor.
6. Ensure that Title VI liaisons discuss the necessity of Title VI adherence with staff at least once each year.

## **Self Monitoring**

1. What office or section within the right of way program has the lead responsibility for Title VI matters?
2. What is the role of the PAA or District Title VI Liaison in the right of way stage?



3. How does the recipient ensure nondiscrimination in the following areas:

- Appraisals
- Replacement housing
- Decent, safe and sanitary housing determinations
- Negotiation
- Compensation
- Last resort housing authorizations



23 CFR 200, 633; 49 CFR 21; NDA

*All Federal assisted construction contracts must include the provisions of Form FHWA-1273 which must be physically incorporated into all contracts as well as appropriate subcontracts and purchase orders. These required contract provisions contain requirements that prohibit discrimination; provide for Equal Employment Opportunity; require payment of predetermined minimum wages; stipulate subcontracting requirements and limitations; mandate compliance with health and safety standards at the work place and require compliance with all appropriate environmental regulations among the noted provisions. Form FHWA-1273 contains a number of certification/provision requirements including non-collusion, lobbying and suspension/debarment. Refer to the "Nondiscrimination Agreement" in the Assurances/Agreements appendix to review the form.*

*A project may only be advertised for bid for prospective contractors after Plan Specifications and Estimates (PS&E) approval and project authorization to proceed to the construction phase are obtained. The authorization is documented and is based on the following:*

- 1. All Right of Way clearances, utility and rail roadwork either have been completed or arrangements have been made for coordination during construction.*
- 2. All matters involving the relocation of individuals and families have been properly addressed when such circumstances exist.*
- 3. All requirements pertaining to the public involvement/hearing process and the location and design approval process have been satisfactorily addressed.*
- 4. Where applicable, area-wide agency compliance review requirements and issues (i.e., clearinghouses) have been accomplished appropriately, completed and/or resolved.*

*All advertising policies and practices must assure free and open competition. This also applies to:*

- 1. Licensing, bonding, prequalification and bidding.*

# construction contracting

2. *Title VI, nondiscrimination, assurances with regard to race, color, national origin, sex, disability and age.*

*Contracts are normally advertised in newspapers, trade journals or other appropriate media to reach a wide audience, attract greater attention and enhance competition. The minimum advertisement period is 3 weeks. There are exceptions when circumstances warrant shorter periods. The period can also be longer for complex projects. When an addendum is issued to change plans or bid items, the bid opening date may be changed to allow bidders time to incorporate the revisions into the bid.*

## Potential Title VI Issues

1. Whether appropriate contract provisions are incorporated into contracts funded by Federal financial assistance.
2. When awarding a contract, whether the contractor has any unresolved Title VI violations.

## Recommended Good Practices and Mitigation Measures

1. Prior to contract award, contact DCIU to verify that the vendor does not have an active Title VI violation.
2. Review all contracts to ensure nondiscrimination clauses are incorporated.
3. Periodically review and analyze processes to ensure nondiscrimination – what can appear as neutral on its face can have discriminatory effects.
4. Periodically review outreach activities to ensure small disadvantaged minority, women, disabled and disabled veteran businesses are invited to participate.
5. Document actions taken to ensure Title VI compliance.

## Possible Compliance Review Questions

1. How are contract opportunities advertised? Describe the process.
2. Describe the requirements for submitting a bid?
3. Describe the sub-contracting opportunities?
4. Describe the process used to promote the participation of Disadvantaged Business Enterprise (DBE) firms?
5. Who monitors the contractor's adherence with the Title VI requirements?
6. Describe the award process.

7. Describe the process used to ensure there are no unresolved Title VI violations.
8. Are locations accessible (geographically and structurally), appropriate times and translation services planned for and provided?
9. Staffing Composition
  - a. Provide a staffing composition listing by position, race and gender. Include an organizational chart.
  - b. Policy and Advisory Committees – Provide a listing of committees and their respective members by position, race and gender.
  - c. Provide a listing of persons who are designated to provide alternative language assistance and identify what languages they translate.
10. Complaints
  - a. Provide a copy of your Title VI complaint procedure. How is the community, your customers, made aware of this process?
  - b. How many Title VI related complaints have you received in the past two years? What was the outcome of those complaints?
11. Training
  - a. Has staff received formal or informal training regarding Title VI of the Civil Rights Act of 1964, related statutes and Environmental Justice Executive Orders?
  - b. What is your schedule for Title VI training this year and who will attend?

## Self Monitoring

1. How does your program ensure that its bidding and contract award procedures are consistent with the nondiscrimination and affirmative action requirements of Title VI?
2. What has your program done to identify any requirements or procedures that may present barriers or obstacles to DBE firms attempting to seek contract opportunities including the following:
  - Bonding requirements
    - Bid Bond
    - Payment Bond
    - Performance Bond

23 CFR 200, 635; 49 CFR 21; NDA

*The primary responsibilities are to safeguard public safety, provide for public convenience and perpetuate public trust through construction engineering and contract administration.*

*Focus is placed on the delivery and construction of capacity enhancing, operational improvement and general maintenance projects that provide and promote the transportation needs for the people of the State of California.*

## Potential Title VI Issues

### **Whether:**

1. The monitoring/inspection of work by the State results in disparate treatment of protected groups.
2. Required mitigation(s) has been effectively implemented. For example, safety through construction zones.
3. Uniformity exists in the approval of plans changes and supplemental agreements.
4. Uniformity exists in the assessment of sanctions, liquidated damages, withholding payments, suspension/termination of contracts.
5. The contractor or applicant have any unresolved Title VI violations when awarding a contract or grant.

## Recommended Good Practices and Mitigation Measures

1. Location of dump sites and batch plants.
2. Prompt payment of contractors and subcontractors.
3. Impact of contract change orders.
4. Monitoring and resolution of noise, traffic congestion and disruption to neighborhoods.

## Possible Compliance Review Questions

### **Administration**

#### **General**

1. What office or section within the Division of Construction has the lead responsibility for Title VI matters?
2. What process is followed when a new directive is issued?

# construction

3. Is the division's Program Area Administrator (PAA) involved in policy development?
4. When awarding a contract, grant, loan or permit, what mechanism is used to ensure that the contractor or applicant does not have any unresolved Title VI violations?
5. What is the role of the PAA and/or key personnel in the construction phase and who is responsible for analysis of the following?
  - Public Involvement and citizen advisory committees
  - Scheduling time and location of public meetings and hearings
  - Project administration and monitoring contract plans and specifications
  - Monitoring and enforcement of mitigation measures included in environmental and planning documents and agreements
  - Final acceptance of the final project
  - Compliance with FHWA-1273
  - Withholding of payment
  - Termination of contract when necessary
6. Who is responsible for identifying Title VI issues in construction documents?

## **Staff Composition**

1. Provide a staffing composition listing by position, race and gender for senior level and above classifications. Include an organizational chart.
2. Policy and Advisory Committees - Provide a listing of committees and their respective members by position, race and gender.
3. Provide a listing of persons who are designated to provide alternative language assistance and identify what languages they translate.

## **Complaint Procedure**

1. Provide a copy of the procedure the division uses to handle a Title VI complaint. How are your customers made aware of this process?
2. How many Title VI related complaints have you received in the past two years? What was the outcome of those complaints?
3. How are Title VI complaint procedures disseminated to program personnel?

## **Training**

1. Have staff received formal or informal training on Title VI of the Civil Rights Act of 1964, related statutes or policy including Executive Orders on Environmental Justice and Limited English Proficiency? Please describe.
2. Are staff scheduled for Title VI and related statutes training this year? If yes, please provide the schedule and who will attend.

## ***Data Collection & Monitoring***

1. Does the division self monitor its activities to ensure nondiscrimination? If yes, please describe the process(es). If not, why not?
2. What process does the division use to self monitor data collection and contract/grant language requirements?
3. What data (race, color, national origin, language considerations, sex, disability and age) do you maintain that reflects the extent to which members of minority and low-income populations, contractors, subcontractors and suppliers participate in construction activities or services?
4. What records and/or reports are maintained that specifically reflect compliance with Title VI?
5. Who is responsible for developing, maintaining and reporting this data?
6. How is this data used?

## **Construction**

### ***Strategies and Goals***

1. Provide a copy of the division's Strategic Plan and Performance Measure Objectives for the current fiscal year.
2. What strategies and efforts has the division developed for ensuring, demonstrating and substantiating compliance with Title VI?
3. Does the division use demographic data that includes identification of the locations of socioeconomic groups, including low-income and minority populations as covered by the Executive Order on Environmental Justice and Title VI provisions? What process is used to identify and define the eligible population?
4. Does the division's process seek to identify the needs of low-income and minority populations? Describe how.
5. What methods are used to identify imbalances?
6. How does the division follow-up to ensure mitigation measures identified for projects significantly impacting minorities are carried through?

### ***Service Equity***

1. Describe, in summary, the programs administered by your division.
2. Does the division have an analytical process in place for assessing the benefits and burdens of transportation system projects on different minority and socioeconomic groups? Please describe.
3. Does the division have a data collection process in place that will support the analysis of benefits and burdens? Describe this process and provide an example.
4. How is the analysis of benefits and burdens used?

# construction

## **Public Involvement**

1. Provide a copy of your public involvement process policy. What is the public comment period before the process or revision is adopted?
2. Is information about construction issues and processes provided timely to citizens, public agencies, transportation agency employees, private sector transportation providers and others affected by transportation plans, programs and projects? Describe how.
3. Does the public have access to technical construction documents? Describe how.
4. Is advance public notice given for public review and comment on key decisions, including approval and amendments? Describe how.
5. Are the needs of low-income and minority households taken into account? Describe how.
6. Does the public outreach effort use media such as print, television, radio, etc., and is it targeted to low-income or minority populations?
7. What is the division's process for advertising a Public Notice that your program is an equal opportunity program and/or that Federal law prohibits discrimination?
8. Are Tribal Governments and related public agencies on public or tribal land involved in the construction process? Describe how Tribal Governments are involved in the construction process and what considerations are given to Indian reservation roads.
9. Give an example of what changes have occurred as a result of input by public involvement, specifically low-income and minority populations?
10. Is the public involvement process reviewed periodically to determine the effectiveness of full and open access to all? Describe how.
11. Describe the types of assurances utilized to ensure that no one is excluded from participation in or denied benefit of or otherwise subjected to discrimination on the basis of race, color, sex, national origin, disability or age from your program's activities and services.
12. Describe actions taken to comply with the Americans with Disabilities Act.
13. What is the role of the PAA in assisting program area personnel with public involvement activities?
14. Has the PAA or key program personnel attended public meetings and/or hearings held for projects with potential Title VI impacts? If yes, give an example and list the meeting/hearing, whom attended and the outcome(s).
15. What role did the PAA and/or key program personnel play to facilitate participation of historically under represented groups and accessibility to the location of the meetings or hearings?

16. Does the PAA review procedures that address public involvement, particularly minority citizen participation? Please explain and provide examples.
17. Please describe the procedures followed when working with external customers who are limited English proficient.

## **Hearings**

1. What statistics are kept on public hearing participation by race and gender?  
Visual identification?
2. Are minority group concerns addressed in a timely manner? Describe how.
3. Are public meeting announcements made available in languages other than English, according to the affected minority population? Describe how and provide an example.
4. Are accessible locations (geographically and structurally), appropriate times and translation services planned for and provided during public hearings?

## **Contracts**

1. Who in the division monitors the contractor's adherence with the Title VI requirements?
2. How does the division promote the participation of Disadvantaged Business Enterprises (DBE) contracts?
3. Are DBE goals set and do you meet these goals?
4. Provide the number, dollar values and types of contracts and funding sources used during the last two fiscal years. Identify if there were any DBEs on the contracts.

## **Goals for Upcoming Federal Fiscal Year 2002**

Please provide a status report on the following goals:

1. Continue to provide Resident Engineer training - including Title VI training.
2. Develop a Title VI Complaint Resolution Process and distribute statewide.
3. Develop direction and policy guidance and disseminate to Resident Engineers for handling significant contract change orders that require Title VI analysis.

## **Self Monitoring**

1. What office or section within the construction function has the lead responsibility for Title VI matters?
2. What is the role of the PAA or District Title VI Liaison in the construction phase?



23 CFR 200, 420; 49 CFR 21

*The Research Program manages a wide variety of transportation related research activities. Most of the research is performed through various types of service contracts with universities and private research organizations. Partnerships are established with local universities to create specialized transportation-related research centers which are utilized to develop, conduct and administer research activities. Research centers provide the opportunity for students and researchers from various universities and colleges to perform transportation-related research and to gain expertise in the field of transportation.*

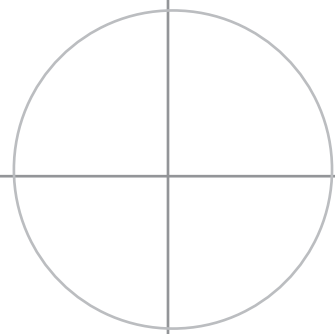
*If it is determined that a university will be used and more than one university has the capability, a request for proposal will be sent to the universities that are identified as minority universities. Minority universities interested in performing research for a transportation agency are encouraged to learn the procurement process and submit proposals when there are studies proposed which they have the capability to accomplish.*

## Potential Title VI Issues

1. Whether there is diversification in the selection of consultant/universities.
2. Proposal/problem statement solicitation.
3. When awarding a contract or grant, whether the contractor or applicant have any unresolved Title VI violations.

## Recommended Good Practices and Mitigation Measures

1. Contract managers review contracts to ensure nondiscrimination clauses are incorporated.
2. Contract managers contact DCIU and the Legal Division to verify that the vendor has no active Title VI violations.
3. Contract managers document above actions.
4. Periodically, conduct an analysis of contract awards to ensure business opportunity is afforded to minority institutions.
5. Periodically, review outreach activities to ensure small, disadvantaged, minority, women and disabled veteran businesses are invited to participate.



## Possible Compliance Review Questions

### Administration

#### *General*

1. What office or section within the Division of New Technology and Research has the lead responsibility for Title VI matters?
2. What process is followed when a new directive is issued?
3. Is the division's Program Area Administrator (PAA) involved in policy development?
4. When awarding a contract, grant, loan or permit, what mechanism is used to ensure that the contractor or applicant does not have any unresolved Title VI violations?
5. What is the role of the PAA and/or key personnel in the research phase and who is responsible for analysis of the following?
  - Public Involvement and citizen advisory committees
  - Scheduling time and location of public meetings and hearings
  - Project administration and monitoring contract plans and specifications
  - Monitoring and enforcement of mitigation measures included in environmental and planning documents and agreements
  - Final acceptance of the final project
  - Subcontractor and supplier with the provision in form FHWA-1273
  - Withholding of payment
  - Termination of contract when necessary
6. Who is responsible for identifying Title VI issues in research documents?

#### *Staff Composition*

1. Provide a staffing composition listing by position, race and gender for senior level and above classifications. Include an organizational chart.
2. Policy and Advisory Committees - Provide a listing of committees and their respective members by position, race and gender.
3. Provide a listing of persons who are designated to provide alternative language assistance and identify what languages they translate.

#### *Complaint Procedure*

1. Provide a copy of the procedure the division uses to handle a Title VI complaint. How are your customers made aware of this process?
2. How many Title VI related complaints have you received in the past two years? What was the outcome of those complaints?
3. How are Title VI complaint procedures disseminated to program personnel?

## ***Training***

1. Have staff received formal or informal training on Title VI of the Civil Rights Act of 1964, related statutes or policy including Executive Orders on Environmental Justice and Limited English Proficiency? Please describe.
2. Are staff scheduled for Title VI and related statutes training this year? If yes, please provide the schedule and who will attend.

## ***Data Collection & Monitoring***

1. Does the division self monitor its activities to ensure nondiscrimination? If yes, please describe the process(es). If not, why not?
2. What process does the division use to self monitor data collection and contract/grant language requirements?
3. What data (race, color, national origin, language considerations, sex, disability and age) do you maintain that reflects the extent to which members of minority and low-income populations, contractors, subcontractors and suppliers participate in research activities or services?
4. What records and/or reports are maintained that specifically reflect compliance with Title VI?
5. Who is responsible for developing, maintaining and reporting this data?
6. How is this data used?

## **Division of New Technology and Research**

### ***Strategies and Goals***

1. Provide a copy of the division's Strategic Plan and Performance Measure Objectives for the current fiscal year.
2. What strategies and efforts has the division developed for ensuring, demonstrating and substantiating compliance with Title VI?
3. Does the division use demographic data that includes identification of the locations of socioeconomic groups, including low-income and minority populations as covered by the Executive Order on Environmental Justice and Title VI provisions? What process is used to identify and define the eligible population?
4. Does the division's process seek to identify the needs of low-income and minority populations? Describe how.
5. What methods are used to identify imbalances?
6. How does the division follow-up to ensure mitigation measures identified for projects significantly impacting minorities are carried through?

# research

## ***Service Equity***

1. Describe, in summary, the programs administered by your division.
2. Does the division have an analytical process in place for assessing the benefits and burdens of transportation system projects on different minority and socioeconomic groups? Please describe.
3. Does the division have a data collection process in place that will support the analysis of benefits and burdens? Describe this process and provide an example.
4. How is the analysis of benefits and burdens used?

## ***Public Involvement***

1. Provide a copy of your public involvement process policy. What is the public comment period before the process or revision is adopted?
2. Is information about research issues and processes provided timely to citizens, public agencies, transportation agency employees, private sector transportation providers and others affected by transportation plans, programs and projects? Describe how.
3. Does the public have access to technical research documents? Describe how.
4. Is advance public notice given for public review and comment on key decisions, including approval and amendments? Describe how.
5. Are the needs of low-income and minority households taken into account? Describe how.
6. Does the public outreach effort include media such as print, television, radio, etc. and is it targeted to low-income or minority populations?
7. What is the division's process for advertising a Public Notice that your program is an equal opportunity program and/or that Federal law prohibits discrimination?
8. Are Tribal Governments and related public agencies on public or tribal land involved in the research process? Describe how Tribal Governments are involved in the research process and what considerations are given to Indian reservation roads.
9. Give an example of what changes have occurred as a result of input by public involvement, specifically low-income and minority populations?
10. Is the public involvement process reviewed periodically to determine the effectiveness of full and open access to all? Describe how.
11. Describe the types of assurances utilized to ensure that no one is excluded from participation in or denied benefit of or otherwise subjected to discrimination on the basis of race, color, sex, national origin, disability or age from your program's activities and services.
12. Describe actions taken to comply with the Americans with Disabilities Act.

13. What is the role of the PAA in assisting program area personnel with public involvement activities?
14. Has the PAA or key program personnel attended public meetings and/or hearings held for projects with potential Title VI impacts? If yes, give an example and list the meeting/hearing, whom attended and the outcome(s).
15. What role did the PAA and/or key program personnel play to facilitate participation of historically under represented groups and accessibility to the location of the meetings or hearings?
16. Does the PAA review procedures that address public involvement, particularly minority citizen participation? Please explain and provide examples.
17. Please describe the procedures followed when working with external customers who are limited English proficient.

## **Hearings**

1. What statistics are kept on public hearing participation by race and gender? Visual identification?
2. Are minority group concerns addressed in a timely manner? Describe how.
3. Are public meeting announcements made available in languages other than English, according to the affected minority population? Describe how and provide an example.
4. Are accessible locations (geographically and structurally), appropriate times and translation services planned for and provided during public hearings?

## **Contracts**

1. Who in the division monitors the contractor's adherence with the Title VI requirements?
2. What affirmative measures are taken to ensure nondiscrimination? Please describe these processes.
3. How are contracting and subcontracting opportunities advertised? Please describe.
4. How does the division promote the participation of Disadvantaged Business Enterprises (DBE) contracts?
5. What efforts are made to provide Historical Black Colleges and Universities, Hispanic Serving Institutions and Tribal Colleges and Universities the opportunity to participate in your research projects?
6. Is there a process in place to ensure that the contractor who receives a contract has no prior unresolved violations?
7. Are mechanisms in place to review selection procedures for principal researchers and research staff to determine minority participation for private consultant contracts not awarded through the colleges or universities? Please describe these mechanisms.

# research

8. Are DBE goals set and do you meet these goals?
9. Provide the number, dollar values and types of contracts and funding sources used during the last two fiscal years. Identify if there were any DBEs on the contracts.

## ***Goals For Upcoming Federal Fiscal Year 2002***

Please provide a status report on the following goals:

- How many research projects are currently underway?
- Summarize actions taken to encourage universities to use minority, female, disabled and low-income students to participate on highway research projects.
- Provide a summary of Title VI self monitoring activities conducted, including findings, recommendations, action items and status thereof.
- What Title VI training was provided by your program?
- What Title VI training was attended by your program personnel?
- List any significant problem areas and corrective actions taken.
- List major accomplishments made regarding Title VI since the last plan update.
- Include instances where Title VI issues were identified and discrimination was prevented.
- List goals/actions planned for the ensuing year.

## **Self Monitoring**

1. What office or section within the research function has the lead responsibility for Title VI matters?
2. What is the role of the PAA/District Title VI Liaisons in the research area?
3. What efforts have been made to ensure that minority universities with significant minority student representation participate in research projects?





# other services

23 CFR 200; 49 CFR 21; UMTA Cir. 4702.1

*Other Services include: Division of Local Assistance, Aeronautics, Mass Transportation, Rail and Procurement and Contracts.*

*All Other Services programs must consider at a minimum and integrate, when applicable, the considerations and requirements discussed in the “Requirements for All Programs” and “Emphasis Programs” requirements. Refer to these sections and tailor them to your programs.*

*The sections below discuss specific requirements by program.*



*The Division of Local Assistance is responsible for the funding and management of the State's local agency projects and programs that utilize Federal-aid funds. Title VI assurances are required for all of the Federal-aid projects this office oversees. Extensive efforts to implement Title VI have been undertaken using the Local Assistance Procedures Manual (LAPM), the Local Assistance Program Guidelines and the District Liaison Area Engineer's (DLAE) staff to ensure Federal requirements are being met.*

## Potential Title VI Issues

Local agency projects have the potential for being discriminatory should the local agencies not comply with Title VI, and the local agency not include the Title VI requirements in their contract provisions. These two areas are addressed in the procedures by the local agency signing an agreement with the Department that they will comply with all Federal and State laws including civil rights and Title VI. Other areas of concern could be:

1. Whether data collection/analysis is adequate.
2. Whether social, economic and environmental effects and impacts have been identified and described.
3. Contract language should include Title VI requirements.
4. When awarding a contract, determine whether the contractor has any unresolved Title VI violations.

## Recommended Good Practices and Mitigation Measures

1. Incorporate Title VI requirements into policies and procedures.
2. Encourage and seek participation from those most directly impacted.
3. Conduct an adequate number of meetings and hearings.
4. Demonstrate consideration of community input via newsletters, letters, leaflets or whatever medium will potentially reach the target group/audience.
5. Develop and implement forms, surveys and other data collection methods.
6. During solicitation of contracts, ensure equal participation including minority and women-owned firms.
7. When local agencies give presentations at community workshops, put graphics, slides, etc. in applicable languages and provide diagrams that show the relationship between their input and the final product. Attempt to include types of diagrams that describe processes and community interactions in ways that translated words cannot.

8. In cooperation with other transportation entities, provide technical assistance.
9. Treat everyone fairly.

## Compliance Reviews

### *Compliance Reviews - Selection Methodology*

The Division of Local Assistance will not randomly select local agencies for compliance reviews. Rather, the selection will be based on neutral criteria or evidence of a violation. A credible complaint can serve as specific evidence suggesting a violation that could trigger a compliance review.

Criteria for identifying local agencies for a compliance review may include the following:

1. Issues targeted in the agency's strategic plan;
2. Issues frequently identified as problems faced by program beneficiaries;
3. Geographical areas the agency wishes to target, because of the many known problems beneficiaries are experiencing, or because the agency has not had a "presence" there for some time;
4. Issues raised in a complaint or identified using a complaint investigation that could not be covered within the scope of the complaint investigation;
5. Problems identified to the Department by community organizations or advocacy groups that cite actual incidents to support their concerns;
6. Problems identified to the Department by its grant recipients;
7. Problems identified to the Department by other State, Federal or local civil rights agencies;
8. The population served by the local agency.

The Local Assistance Program will develop a compliance review instrument in coordination with the Title VI Program. A Title VI representative will participate in all Local Assistance Program Title VI compliance reviews.

An adequate and representative sample of local agencies reviewed is necessary to indicate whether local agencies are in compliance with Title VI.

## Annual Report

Annually, the Title VI Program submits to the FHWA an accomplishment report detailing its accomplishments and each Emphasis Program's accomplishments for the past year and goals for the upcoming year. The reporting period is October 1 through September 30 which is the Federal Fiscal Year. The Local Assistance Program will be responsible for developing selection methodology to identify the number selection of local agencies that will be required to submit annual reports. A representative sample is sufficient and should be alternated annually.

# local assistance

## Methods of Administration

The Division of Local Assistance is required to integrate the Title VI Assurances described in the model Nondiscrimination Agreement between the Local Assistance Program and the Named Recipient into the Local Assistance Program Master Agreement or as a separate agreement as a condition of receiving Federal funds. A copy of the model Nondiscrimination Agreement is located in the Assurances/Agreements appendix section.

## Planning and Project Development Process

Refer to the “Requirements for All Programs” and “Emphasis Programs” requirements for guidance. Because Division of Local Assistance is an external program, the focus will be placed on oversight, monitor and review. Approach the discussions requirements from an oversight perspective with the exception of the “Contract/Grants/Permits/Loans Assurances” and “Complaint Handling” sections, which may directly apply.

*The Aeronautics Program permits and annually inspects heliports and public-use airports, makes recommendations regarding proposed school sites within two miles of an airport runway and authorizes helicopter landing sites at or near schools. The Aeronautics Program administers noise regulation and land use planning laws that foster compatible land-use planning around airports and encourages environmental mitigation measures to lessen noise, air pollution and other impacts caused by aviation. It also provides grants and loans for safety, maintenance and capital improvement projects at airports.*

*The Aeronautics Program assists in the development of an air transportation system that:*

- *Meets statewide and regional goals and objectives (Section 14000.5 (c) California Government Code),*
- *Is consistent with the needs and desires of the public and*
- *Is compatible with airport location and services.*

## **Planning and Project Development Process**

Refer to the “Requirements for All Programs” and “Emphasis Programs” requirements for guidance. Because the Aeronautics Program is an external program, the focus will be placed on oversight, monitor and review. Approach the discussions requirements from an oversight perspective with the exception of the “Contract/Grants/Permits/Loans Assurances” and “Complaint Handling” sections which may directly apply.

# mass transportation

23 CFR 200; 49 CFR 21; UMTA Cir. 4702.1

*The Mass Transportation Program is responsible for the administration of State and Federal Programs. These programs provide funding and technical assistance for mass transportation operating assistance and capital improvement projects, including the development of inter-modal facilities that serve the movement of people. It is responsible for services involving buses and certain types of vans, including demand-responsive services for the disabled and commuter and urban rail services and the improvement, acquisition and other capital expenditures associated with waterborne ferry operations for the transportation of passengers and/or vehicles.*

## Planning and Project Development Process

Refer to the “Requirements for All Programs” and “Emphasis Programs” requirements sections for guidance. Because Mass Transportation is an external program, the focus will be placed on oversight, monitor and review. Approach the discussions requirements from an oversight perspective with the exception of the “Contract/Grants/Permits/Loans Assurances” and “Complaint Handling” sections which may directly apply.

23 CFR 200; 49 CFR 21

*The Department Rail Program manages and coordinates intercity rail passenger services in California. The Rail Program directly administers two State-supported routes, the San Joaquin running from the Bay Area to Bakersfield via Stockton (with one train operating between Sacramento and Stockton to Bakersfield) and the Pacific Surfliners (formerly the San Diegans) running from San Diego to Los Angeles and San Luis Obispo. These routes are supplemented by dedicated feeder bus service connecting outlying communities with intercity rail stations along each of the corridors. Amtrak operates the rail and bus services under contract with the State. The Rail Program also provides funding and oversight to the Capitol Corridor Joint Powers Authority (CCJPA) which has the responsibility for administering the Capitols which run from San Jose/Oakland to Sacramento/Auburn. The CCJPA, in turn, contracts with Amtrak to operate the Capitols and their feeder buses.*

## Planning and Project Development Process

Refer to the “Requirements for All Programs” and “Emphasis Programs” requirements sections for guidance. Because Rail is an external program, the focus will be placed on oversight, monitor and review. Approach the discussions requirements from an oversight perspective with the exception of the “Contract/Grants/Permits/Loans Assurances” and “Complaint Handling” sections which may directly apply.

# procurement and contracts

23 CFR 200; 49 CFR 21

*The Division of Procurement and Contracts provides support to the Department's divisions/districts in providing the following services: 1) procurement of supplies and equipment for the Department's divisions/districts and/or employee use; and 2) contracting for commercial, professional services and construction work (under \$120,000) for Department's divisions/districts. Construction contracts from \$120,000 are the responsibility of the Division of Engineering Services. The Department has some delegation in the area of procurement and contracts and has implemented bidding processes to ensure compliance with the nondiscrimination requirements of Title VI.*

## Potential Title VI Issues

1. Whether appropriate contract provisions are incorporated into contracts funded by Federal financial assistance.
2. When awarding a contract, whether the contractor has any unresolved Title VI violations.

## Recommended Good Practices and Mitigation Measures

1. Contact minority institutions annually, and inform them of the procurement process.
2. Prior to contract award, contact DCIU and Legal Division to verify that the vendor does not have an active Title VI violation.
3. Review all contracts to ensure nondiscrimination clauses are incorporated.
4. Periodically, review and analyze processes to ensure nondiscrimination - what can appear as neutral on its face can have discriminatory effects.
5. Periodically, review outreach activities to ensure small, disadvantaged, minority, women and disabled veteran businesses are invited to participate.
6. Document actions taken to ensure Title VI compliance.

## Possible Compliance Review Questions

1. How are contract opportunities advertised? Describe the process.
2. Describe the requirements for submitting a bid?
3. Describe the sub-contracting opportunities?
4. Describe the process used to promote the participation of DBE consultants?

5. Who monitors the contractor's adherence with the Title VI requirements?
6. Describe the award process.
7. Describe the process used to ensure there are no unresolved Title VI violations.
8. Are locations accessible (geographically and structurally), appropriate times and translation services planned for and provided to minority and low-income persons?
9. Staffing Composition
  - a. Provide a staffing composition listing by position, race and gender. Include an organizational chart.
  - b. Policy and Advisory Committees - Provide a listing of committees and their respective members by position, race and gender.
  - c. Provide a listing of persons who are designated to provide alternative language assistance and identify what languages they translate.
10. Complaints
  - a. Provide a copy of your Title VI complaint procedure. How is the community, your customers, made aware of this process?
  - b. How many Title VI related complaints have you received in the past two years? What was the outcome of those complaints?
11. Training
  - a. Has staff received formal or informal training regarding Title VI of the Civil Rights Act of 1964, related statutes and Environmental Justice Executive Orders?
  - b. What is your schedule for Title VI training this year and who will attend?

## Self Monitoring

1. How does your program ensure that its bidding and contract award procedures are consistent with the nondiscrimination and affirmative action requirements of Title VI?
2. What has your program done to identify any requirements or procedures that may present barriers or obstacles to DBE firms attempting to seek contract opportunities including the following:
  - Bonding requirements
  - Bid Bond
  - Payment Bond
  - Performance Bond



Civil Rights  
TITLE VI PROGRAM  
[a p p e n d i c e s]



***Title VI of the 1964 Civil Rights Act***

provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance (implementation through 23 CFR 200.9 and 49 CFR 21).

***Section 162(a) of the Federal-Aid Highway Act of 1973***

(Section 324, Title 23 U.S.C.) added the requirement that there be no discrimination on the grounds of sex or gender.

***Section 504 of the Rehabilitation Act of 1973***

provides nondiscrimination on the basis of disability under Federal grants and programs.

***The Age Discrimination Act of 1975***

(Section 6101-6107, Title 42 U.S.C.) prohibits discrimination in Federally Assisted Programs.

***The Civil Rights Restoration Act of 1987***

amended Title VI of the 1964 Civil Rights Act to make it clear that discrimination is prohibited throughout an entire agency if any part of the agency receives Federal assistance.

***Executive Order 12898***

(issued February 11, 1994) addresses Environmental Justice regarding minority and low-income populations.

***Executive Order 13166***

(issued August 16, 2000) improves access to services for persons with limited English proficiency.

[As used in Title 23 of the Code of Federal Regulations, Highways, Part 200.5]

## ***“Adverse Effects”***

the totality of significant individual or cumulative human health or environmental effects, including interrelated social and economic effects, which may include, but are not limited to: mental or physical impairment, infirmity, illness or death; air, noise and water pollution and soil contamination; destruction or disruption of man-made or natural resources; destruction or diminution or aesthetic values; destruction or disruption of community cohesion or a community’s economic vitality; destruction or disruption of the availability of public and private facilities and services; noise and/or vibration; adverse employment effects; displacement of persons, businesses, farms or nonprofit organizations; increased traffic congestion, isolation, exclusion or separation of racial or ethnic minority or low-income individuals within a given community or from the broader community; and the denial of, reduction or significant delay in the receipt of, benefits of USDOT programs, policies or activities. Definition adopted and adapted from the USDOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations dated February 3, 1997.

## ***“Affirmative Action”***

a good faith effort to eliminate past and present discrimination in all federally assisted programs, and to ensure future nondiscriminatory practices.

## ***“Beneficiary”***

any person or group of persons (other than States) entitled to receive benefits directly or indirectly, from any federally assisted program, i.e., relocates, impacted citizens, communities, etc.

## ***“Benefits”***

for a specific project, corridor or sub-area, benefits should include all of the benefits listed in the purpose and need statement. For a metropolitan transportation system, benefits should refer to how the Long Range Transportation Plan and the Transportation Improvement Program promote the safety, mobility, economic productivity, human environment, natural environment and other goals identified and adopted in State and local plans for all populations served by the transportation agency.

## ***“Burdens”***

refer to disproportionately high and adverse effects.

## ***“Citizen Participation”***

an open process in which the rights of the community to be informed, to provide comments to the government and to receive a response from the Government are met through a full opportunity to be involved and to express needs and goals.

# definitions

***“Compliance”***

a satisfactory condition existing when a recipient has effectively implemented all of the Title VI requirements or can demonstrate that every good faith effort toward achieving this end has been made.

***“Customer”***

a member of the public who is eligible to benefit from the program’s service or activity.

***“Deficiency Status”***

the interim period during which the recipient state has been notified of deficiencies, has not voluntarily complied with Title VI.

***“Disproportionately High and Adverse Effect”***

an adverse effect that: (1) is predominately borne by a minority population and/or a low-income population; or (2) will be suffered by the minority population and/or low-income population and is appreciable more severe or greater in magnitude than the adverse effect that will be suffered by the non-minority population and/or non-low-income population. Definition from the USDOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations dated February 3, 1997.

***“Discrimination”***

that act or action whether intentional or unintentional, through which a person in the United States, solely because of race, color, religion, sex, disability, age or national origin has been otherwise subjected to unequal treatment under any program or activity receiving financial assistance from the Federal Highway Administration under title 23 U.S.C.

***“Distribution”***

of benefits and burdens: The distribution of benefits and burdens refers to distribution across all populations served by the transportation agency (for MPOs, transit providers, local transportation departments) or within a recognized, defined boundary such as a State DOT District, metropolitan area or rural county (for State DTs). Populations served may include external populations (i.e. a minority population that lives outside but works within the area or visitors to an area with a unique resource, landmark or historic site).

***“District”***

a Department of Transportation office serving a specific geographical area of California.

***“Eligible Population”***

in general, the public eligible to benefit from the Department’s programs, activities and services. Project specific is defined by the geographical scope of the project.

***“Facility”***

includes all, or any part of, structures, equipment or other real or personal property, or interests therein, and the provision of facilities includes the construction.

***“Federal Assistance”***

includes: Grants and loans of Federal funds; the grant or donation of Federal property and interests in property, the detail of Federal personnel, the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient and Federal agreement, arrangement, or other contract which has, as one of its purposes, the provision of assistance.

***“Low-Income”***

a household income at or below the Department of Health and Human Services poverty guidelines. Definition from the USDOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations dated February 3, 1997.

***“Low-Income Population”***

any readily identifiable group of low-income persons who live in geographic proximity, and, if circumstances warrant, geographically dispersed/transient persons (such as migrant workers or Native Americans) who would be similarly affected by a proposed USDOT program, policy or activity. Definition from the USDOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations dated February 3, 1997.

***“Minority”***

a person who is (1) Black (having origins in any of the black racial groups of Africa); (2) Hispanic (of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race); (3) Asian American (having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or Pacific Islands); or (4) American Indian and Alaskan Native (having origins in any of the original people of North America and who maintains cultural identification through tribal affiliation or community recognition). Definition from the USDOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations dated February 3, 1997.

***“Minority Population”***

any readily identifiable groups of minority persons who live in geographic proximity, and if circumstances warrant, geographically dispersed/transient persons (such as migrant workers or Native Americans) who will be similarly affected by a proposed USDOT program, policy or activity. Definition from the USDOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations dated February 3, 1997.

# definitions

***“Noncompliance”***

a recipient has failed to meet prescribed requirements and has shown an apparent lack of good faith effort implementing all of the Title VI requirements.

***“Persons”***

where designation of persons by race, color, or national origin is required, the following designations ordinarily may be used: “White not of Hispanic origin”, “Black not of Hispanic origin”, “Hispanic”, “Asian or Pacific Islander”, “American Indian or Alaskan Native.” Additional subcategories based on national origin or primary language spoken may be used where appropriate, on either a national or a regional basis.

***“Program”***

includes any highway, project or activity for the provision of services, financial aid, or other benefits to individuals. This includes education or training, work opportunities, health, welfare, rehabilitation, housing, or other services, whether provided directly by the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipients.

***“Program Area Officials”***

are the officials in FHWA who are responsible for carrying out technical program responsibilities.

***“Public Involvement”***

the effort or mechanisms to engage the eligible population of a program’s process or activity including and specifically targeting low-income and minority populations.

***“Recipient”***

means any State, territory, possession, the District of Columbia, Puerto Rico, or any political subdivision or instrumentality thereof, or any public or private agency, institution, or organization, or other entity, or any individual, in any State, territory, possession, the District of Columbia, or Puerto Rico, to whom Federal assistance is extended, either directly or through another recipient (subrecipient), for any program. Recipient includes any successor, assignee, or transferee thereof.

***“Significant”***

having meaning; having or likely to have influence; of a noticeable or measurably large amount.

***“State Highway Agency”***

that department, commission, board or official of any State charged by its laws with the responsibility for highway construction. The term State would be considered equivalent to State highway agency if the context so implies.

# definitions

***“Secretary”***

the secretary of Transportation as set forth in 49 CFR 21.17(g)(3) or the Federal highway Administrator to whom the Secretary has delegated authority in specific cases.

***“Title VI Program”***

the system of requirements developed to implement Title VI of the Civil Rights Act of 1964. References in this part to Title VI requirements and regulations shall not be limited to only Title VI of the Civil Rights Act of 1964. Where appropriate, this term also refers to the civil rights provisions of other Federal related statutes to the extent that they prohibit discrimination on the grounds of race, color, national origin, sex, disability or age in programs receiving Federal financial assistance.

# glossary of terms

**Civil Rights Specialist**

is a person who works in Civil Rights and is knowledgeable in their discipline. This person can also be the Title VI Program Liaison.

**District Title VI Liaison**

is a person designated by their district to work on Title VI matters and is knowledgeable in their discipline.

**Equally**

describes the function of a transportation system in servicing the transportation and/or mobility needs of “all persons,” without discrimination (i.e., disproportionately benefiting or harming one group over another - a violation of Title VI of the Civil Rights Act of 1964).

**Equitably**

describes the function of a transportation system in serving the transportation and/or mobility needs of “all persons.”

**Program Area Administrator**

is a person designated by their program to work on Title VI matters, is knowledgeable in their respective discipline, and is a liaison between the Title VI Program and the districts.

**Program Specialist**

is a person who works in one of the emphasis programs or key personnel and is knowledgeable in that discipline.

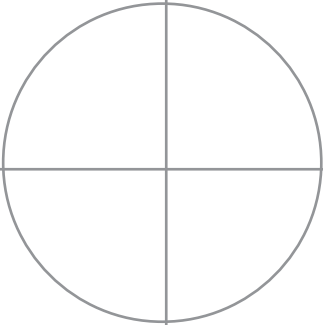
**Title VI Program Liaison**

is a person who works in the Title VI Program and supports the Title VI Coordinator in the Title VI endeavor.





preventing discrimination  
in the federal aid program



# Preventing Discrimination in the Federal Aid Program: A Systematic and Interdisciplinary Approach

*The following narrative describes the Federal-aid highway program. It is primarily for the guidance of Federal and State Civil Rights personnel as well as Federal and State program personnel since both groups charged with the effective execution of nondiscrimination laws and regulations relating to the Federal-aid highway process. The information and terms used in this guide may vary from State to State. Therefore, questions regarding how the Federal-aid highway process is carried out in any particular State should be directed to appropriate program area personnel. It should further serve as an opportunity for Civil Rights personnel and program area personnel to work closely in carrying out their mutual nondiscrimination program responsibilities.*

# the planning process

## A. General

There are various analysis and studies which are completed in the process of developing an efficient transportation plan. States have the primary responsibility for preparing and maintaining the statewide plan and the Statewide Transportation Improvement Program (STIP). Many Metropolitan Planning Organizations (MPO) have their own staff which perform most of the technical work. Other MPOs rely on a consortium of State and local government staff to perform the necessary technical analysis. In the smaller urban areas, the State may do the analysis for the MPO. Occasionally, when MPOs do not have the capabilities, consultants may be hired to conduct planning studies, traffic studies, corridor studies, or other highly technical work.

Major changes were made in the planning process by ISTEA. The changes are reflected in the implementing rules 23 Code of Federal Regulations (CFR) 450, jointly published by FHWA and the Federal Transit Administration (FTA) in the October 28, 1993, ***Federal Register***. Subpart B covers statewide planning and Subpart C covers metropolitan planning. Related regulations are in 23 CFR 500 dealing with Management and Monitoring Systems and in 40 CFR 51 and 93, dealing with air quality conformity. Implementation of the Federal planning requirements is a cooperative process involving several key agencies. The FTA and FHWA jointly oversee the planning process.

## B. Statewide Planning

A statewide transportation planning process is now required. There was no requirement for statewide planning prior to ISTEA. The statewide transportation planning process produces long-range intermodal statewide transportation plans and short-range programs of projects. The decision-making effort for this process is open for input from a variety of participants and any others who wish to be involved. The short-range program of projects is called a STIP and must include at least all projects proposed to be funded by Title 23 or FTA funds. The ISTEA and the rules contain a list of 23 factors that must be considered in the statewide planning process. The 23 factors are listed here and at 23 CFR 450.208.

### ***23 Factors Considered in the Statewide Planning Process***

1. The transportation needs (strategies and other results) identified through the management systems required by 23 United States Code (U.S.C.) 303 (modified by the National Highway System).
2. Any Federal, State, or local energy use goals, objectives, programs, or requirements.
3. Strategies for incorporating bicycle transportation facilities and pedestrian walkways in appropriate projects throughout the State.
4. International border crossings and access to ports, airports, intermodal transportation facilities, major freight distribution routes, national parks, recreation and scenic areas, monuments and historic sites, and military installations.

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5. The transportation needs of nonmetropolitan areas (areas outside of MPO planning boundaries) through a process that includes consultation with local elected officials with jurisdiction over transportation.
6. Any metropolitan area plan developed pursuant to 23 U.S.C. 134 and Section 8 of the Federal Transit Act, 49 U.S.C. app. 1607.
7. Connection between metropolitan planning areas within the State and with metropolitan planning areas in other States.
8. Recreational travel and tourism;
9. Any State plan developed pursuant to the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq. (and in addition to plans pursuant to the Coastal Zone Management Act).
10. Transportation system management and investment strategies designed to make the most efficient use of existing transportation facilities (including consideration of all transportation modes).
11. The overall social, economic, energy, and environmental effects of transportation decisions (including housing and community development effects and effects on the human, natural, and manmade environments).
12. Methods to reduce traffic congestion and to prevent traffic congestion from developing in areas where it does not yet occur, including methods which reduce motor vehicle travel, particularly single-occupant motor vehicle travel.
13. Methods to expand and enhance appropriate transit services and to increase the use of such services (including commuter rail).
14. The effect of transportation decisions on land use and land development, including the need for consistency between transportation decision-making and the provisions of all applicable short-range and long-range land use and development plans (analysis should include projections of economic, demographic, environmental protection, growth management and land use activities consistent with development goals and transportation demand projections).
15. Strategies for identifying and implementing transportation enhancements where appropriate throughout the State.
16. The use of innovative mechanisms for financing projects, including value-capture pricing, tolls, and congestion pricing.
17. Preservation of rights-of-way for construction of future transportation projects, including identification of unused rights-of-way which may be needed for future transportation corridors, identification of those corridors for which action is most needed to prevent destruction or loss (including strategies for preventing loss of rights-of-way).

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18. Long-range needs of the State transportation system for movement of persons and goods.
19. Methods to enhance the efficient movement of commercial motor vehicles.
20. The use of life-cycle costs in the design and engineering of bridges, tunnels, or pavements.
21. The coordination of transportation plans programs developed for metropolitan planning areas of the State under 23 U.S.C. 134 and Section 8 of the Federal Transit Act with the statewide transportation plans and programs developed under this subpart, and the reconciliation of such plans and programs as necessary to ensure connectivity within transportation systems.
22. Investment strategies to improve adjoining State and local roads that support rural economic growth and tourism development, Federal agency renewable resources management, and multipurpose land management practices, including recreation development.
23. The concerns of Indian tribal governments having jurisdiction over lands within the boundaries of the State.

## C. Metropolitan Planning

The planning process that has been required since the 1962 Highway Act has been greatly enhanced by ISTEA. Just like the statewide planning process, the metropolitan planning process must produce a long-range plan and transportation improvement program (TIP) that includes at least all projects that are to be Title 23- or FTA-funded and all others involving an FHWA or FTA approval action. Financial considerations, movement of environmental considerations into the planning process, etc., are emphasized in the ISTEA and in the implementing rules. The ISTEA and its rules contain a list of 15 factors that must be considered in the metropolitan planning process. The National Highway Designation Act of 1995 added a sixteenth item referred to as Recreational Travel and Tourism. These factors are listed below and in 23 CFR 450.316.

### ***16 Factors Considered in the Metropolitan Planning Process***

1. Preservation of existing transportation facilities and, where practical, ways to meet transportation needs by using existing transportation facilities more efficiently.
2. Consistency of transportation planning with applicable Federal, State, and local energy conservation programs, goals, and objectives.
3. The need to relieve congestion and prevent congestion from occurring where it does not yet occur including:
  - a. The consideration of congestion management strategies or actions which improve the mobility of people and goods in all phases of the planning process; and
  - b. In Transportation Management Areas, a congestion management system that provides for effective management of new and existing transportation facilities

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through the use of travel demand reduction and operation management strategies (e.g., various elements of Intelligent Transportation Systems) shall be developed in accordance with Section 450.320.

4. The likely effect of transportation policy decisions on land use and development and the consistency of transportation plans and programs with the provisions of all applicable short- and long-term land use and development plans. The analysis should include projections of metropolitan planning area economic, demographic, environmental protection, growth management, and land use activities consistent with metropolitan and local/central city development goals (community, economic, housing, etc.), and projections of potential transportation demands based on the inter-related level of activity in these areas.
5. Programming of expenditures for transportation enhancement activities as required under 23 U.S.C. 133.
6. The effects of all transportation projects to be undertaken within the metropolitan planning area, without regard to the source of funding (the analysis shall consider the effectiveness, cost effectiveness, and financing of alternative investments in meeting transportation demands and supporting the overall efficiency and effectiveness of transportation system performance and related impacts on community/central city goals regarding social and economic development, housing, and employment).
7. International border crossings and access to ports, airports, intermodal transportation facilities, major freight distribution routes, national parks, recreation areas, monuments and historic sites, and military installations (supporting technical efforts should provide an analysis of goods and services movement problem areas, as determined in cooperation with appropriate private sector involvement, including, but not limited to, addressing interconnected transportation access and service needs of intermodal facilities).
8. Connectivity of roads within metropolitan planning areas with roads outside of those areas;
9. Transportation needs identified through the use of the management systems required under 23 U.S.C. 303 (strategies identified under each management system will be analyzed during the development of the transportation plan, including its financial component, for possible inclusion in the metropolitan plan and TIP).
10. Preservation of rights-of-way for construction of future transportation projects, including future transportation corridors.
11. Enhancement of the efficient movement of freight.
12. The use of life-cycle costs in the design and engineering of bridges, tunnels, or pavement (operating and maintenance costs must be considered in analyzing transportation alternatives).

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13. The overall social, economic, energy, and environmental effects of transportation decisions (including consideration of the effects and impacts of the plan on the human, natural and man-made environment such as housing, employment and community development, consultation with appropriate resource and permit agencies to ensure early and continued coordination with environmental resource protection and management plans, and appropriate emphasis on transportation related air quality problems in support of the requirements of 23 U.S.C. 109(h), and section 14 of the Federal Transit Act (49 U.S.C. 1610), section 4(f) of the DOT Act (49 U.S.C. 303) and section 174(b) of the Clean Air Act (42 U.S.C. 7504(b)).
14. Expansion, enhancement, and increased use of transit services.
15. Capital investments that would result in increased security in transit systems.
16. Tourism and recreation.

Long-range plans frame the State's long-range transportation goals and objectives for the State and/or region. Projects should be identified and programmed on the STIP and ultimately implemented. The projects implemented from the STIP should be in line with the goals and objectives identified in the long-range plan.

Projects are placed on the STIP or TIP through a cooperative process involving the State DOT, MPOs, and transit operators. Project priorities are established in the TIP development process and revised through procedures that meet the project selection stipulations in 23 U.S.C. 134 and 135 for the various funding categories. An implementing agency then advances projects from the approved STIP.

## D. Potential Title VI Issues and Suggested Mitigation of Adverse Impacts

Plans and programs have the potential of being discriminatory in more subtle ways than projects. The major area of impact by plans and programs is through decisions which identify one or more planned improvements over other options. This consequence may result from procedures and processes that shut a group out of the process, or from the failure to consider the impacts of various transportation system alternatives and programs of projects on one or more identified groups. To the extent that plans and programs include proposed improvements with disproportionate beneficial impacts or reflect decision processes that exclude certain groups, the long-term agenda for transportation improvements may be inappropriately biased. This could lead to project implementation that is inconsistent with nondiscrimination requirements. The actual impacts may only be experienced as projects are implemented. The planning process represents a comprehensive perspective from which to assess the potential consequences of developing and operating the transportation system.



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## **Issue:**

### **1. *Whether there is effective public involvement/participation.***

Under ISTEA, planners and decisionmakers have a great deal of flexibility in shaping a State or metropolitan region's transportation system. Public involvement is a key source of input for these planning and programming decisions during the planning process.

Inadequate efforts to reach and involve minority groups during the planning process can result in denying minorities the opportunity to participate in public decisions on transportation systems and projects directly affecting them.

Public involvement in transportation planning and programming is performance based. This means that the FHWA-FTA joint planning regulations do not have detailed specifications as to how the public, including minorities, are to be involved in statewide or metropolitan planning. Instead, the Federal agencies give performance specifications for public involvement processes in the joint planning regulations (23 CFR 450, Sections 212 and 316). States and MPOs then develop detailed public involvement processes custom tailored for local conditions. The processes describe in detail how the public is provided the opportunity to be involved in the development and approval of transportation plans, State and MPO transportation improvement programs, major transportation investment studies, and the annual formal public meetings required in transportation management areas. The public participates in the development of the public involvement processes. At a minimum there is a 45-day public review period before adoption of public involvement approaches. The 45-day public review of draft public involvement processes should be advertised in minority media and minority comment sought through contact with minority spokespersons.

The FHWA and FTA field staff give technical assistance to MPOs and statewide planning units during development of their public involvement processes. Proactive approaches should provide adequate opportunity for minority involvement in the development of the processes. Statewide or metropolitan planners can achieve involvement through contacts with minority group leaders, focus group discussions, and workshop format public meetings. Focus groups can identify factors hindering participation by minorities, as well as explore their concerns in depth. Workshop meetings in minority communities can solicit ideas as to how minority persons would like to participate. The FHWA program staff advocate these activities best through contact with the metropolitan or statewide planning staff responsible for public involvement. Contact should be conducted in coordination with FHWA and FTA planning staff. Minority groups should be included in all aspects of the planning and programming process to support decisionmaking which is sensitive to community impacts and concerns.

Statewide and metropolitan planning staff responsible for public involvement should review the public involvement process operation in terms of local minority groups' participation. The public involvement effort should be sensitive to the following questions and information related to them.



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- Are minority media appropriately included in all notification processes for public meetings or public review of agency documents?
- Are contacts with minority groups or leaders used appropriately to identify information needs and planning/programming issues of concern? Focus group discussions are also useful in exploring minority issues in depth.
- Is technical information available in formats and at places and times conducive to review by minorities? This may require provision of information to sight-impaired persons, non-English speakers, or to persons without extensive formal schooling.
- Are persons traditionally underserved by transportation systems such as low-income or minorities actively sought out for involvement? This active effort goes beyond merely offering a passive opportunity to comment to those who see a notice in a newspaper of general circulation. Often, it is necessary to translate bureaucratic documents into lay language and to describe why minorities and other groups should be interested in participation. Another effective approach is to use a neutral facilitator to encourage minority persons at public meetings to participate actively. Some MPOs have used minority citizens advisory committees to foster minority participation. Meetings held in minority areas in the evening encourage minority attendance at far higher levels than meetings in downtown offices during the day.
- Do meeting formats encourage participation by minorities or Americans with disabilities? Less formal meetings are far less intimidating, e.g., circulating at an open house and asking agency staff one-on-one about plans or programs. Informal discussions provide information tactfully to persons who read with difficulty. Contribution of comments in one-on-one settings facilitates commenting by all, including minorities.

## ***Mitigation:***

- Obtain participation from those most directly impacted;
- Contact minority community leaders, organizations, media;
- Consider availability of information (time, place, language, educational level);
- Conduct adequate number of meetings and hearings;
- Citizen advisory committees; and
- Appropriate meeting location, time, day of week, and atmosphere.

## ***2. Whether input from minority groups/persons is seriously considered.***

Failing to seriously consider comments by minority groups/persons may be discriminatory. When public agencies receive comments towards the end of the plan or TIP preparation, members of the public may feel that commenting is futile because the agency position is obvious. Consequently, comments tend to be very critical and unconstructive. On the agency side, there is commitment to the work invested in draft plans and programs. In responding to comments, agencies then tend to focus on explaining why public

comments cannot be implemented. Collaborative task forces are effective ways to reassure public citizens that they can influence decisionmaking. The use of newsletters is also an effective medium to provide information to minority communities or groups on how past input has been considered and to continue soliciting their involvement.

Anticipatory and supportive review of the metropolitan and statewide public involvement processes can ensure Title VI compliance. There are three review processes required under the joint planning regulations:

- All MPOs and State DOTs must periodically review metropolitan or statewide public involvement processes to ensure that full and open access is provided. Civil rights staff may assist MPOs and State DOTs specifically with ways to address minority participation during these reviews.
- The FHWA and FTA conduct regular certification reviews in MPOs with populations in excess of 200,000. The certification reviews cover compliance with all provisions of the metropolitan planning regulations including public involvement. The FHWA and FTA review public involvement processes in other MPOs, as necessary. Civil rights staff may seek to participate in these reviews and may address minority participation.
- The FHWA and FTA make a planning finding on statewide planning processes including the public involvement process at least every 2 years. Title VI compliance is an identified part of the finding, and civil rights staff can provide input to the finding.

### ***Mitigation:***

- Actively demonstrate consideration of community input via newsletters, letters, leaflets, or whatever medium that will potentially reach the target group/audience.

### ***3. Whether there is coordination with Indian tribal governments in statewide metropolitan transportation planning.***

The projects which usually have the greatest potential for discriminatory impacts are those within metropolitan areas that involve large numbers of relocations and/or community disruption. However, some rural projects also have potential for discrimination, especially those impacting Native Americans. Furthermore; users of the system, rural or metropolitan, may be adversely impacted by its development, operation, and/or maintenance. Hence; it is very important that special efforts are made to reach out to those segments of society that have been traditionally underserved during the planning process to secure their input.

It is necessary for States and MPOs to provide opportunity for active involvement of Indian tribal governments in statewide and metropolitan transportation planning and programming. However, when planning for the involvement of Indian tribal governments, it is important for agency staff to recognize and be sensitive to tribal customs and to the nationally recognized sovereignty of tribal governments. Tribal governments should be actively solicited to participate in the development of metropolitan and

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State plans and programs as independent government bodies rather than as specific minority groups. The coordination activities with Indian tribal governments should reflect the following:

- Early involvement.
- Timely information exchange.
- Adequate notice.
- Consideration of input.

## ***Mitigation:***

- Establish better/effective relationships with Indian tribal governments.
- Training/knowledge of Indian tribal customs and laws that govern their various sovereign nations.

## ***4. Whether data collection/analysis is adequate.***

The information that is collected and analyzed during the planning process is critical to the development of studies and the decisions that are to be reached during project development. It is essential that data collection and analysis reflect the metropolitan area and appropriately address:

- Community boundaries.
- Racial and ethnic make up.
- Income levels, property taxes, etc..
- Community services, schools, hospitals, shopping areas.

## ***Mitigation:***

Forms, surveys, and other data collection methods designed to obtain the following information:

- Description of community boundaries;
- Racial/ethnic makeup;
- Income levels, tax base; and
- Community services, schools, hospitals, shopping, public safety.

## ***5. Whether Social, Economic, and Environmental (SEE) effects and impacts have been identified and described.***

In order to ensure a balanced view of the SEE effects of the planning process, the utilization of a systematic interdisciplinary approach is recommended. The use of a coordinated effort by various disciplines working together can more easily identify all the SEE effects and propose possible mitigation options. The thrust of the overall decisionmaking process is making transportation decisions which are sensitive to and address community impacts.

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## **Mitigation:**

- Systematic interdisciplinary approach, and
- Public involvement techniques such as minority citizen advisory committees.

## **6. *Whether contracting opportunities for planning studies, corridor studies, or other work have been provided to minorities and women.***

Consultants may be hired to conduct planning studies, corridor studies, or other highly technical work. Efforts should be made to ensure that minority- and women-owned businesses have opportunities to bid on and undertake these studies.

## **Mitigation:**

- Outreach efforts to minority and women-owned businesses and minority institutions of higher education.

## A. General

The term project development refers to the process of a highway or transit project in which the environmental study necessary for the National Environmental Policy Act (NEPA) compliance is performed. The NEPA of 1969 is the foundation of the project development process as described in 23 CFR 771, the FHWA/FTA joint environmental regulation. The NEPA requires that all Federal agencies examine and disclose the possible and likely effects of their actions on the human environment. The FHWA uses the term human environment in its broadest sense to include neighborhoods, communities, and natural ecosystems. Effects on the human environment similarly include a broad array of impacts including direct physical effects to air, water, and land as well as less quantifiable effects, such as impacts to cultural resources, community life, and land use patterns.

For highway projects, the State Departments of Transportation perform this analysis and prepare an environmental document with the FHWA's assistance and oversight. Final approval of the process is the responsibility of the FHWA. Environmental compliance requires consideration of all possible SEE effects of a proposed project and seeks to ensure that the decisions made are in the best public interest. During this process, data and information on project alternatives and related environmental effects are collected and analyzed. The goal of this process is to develop a complete understanding of the existing and future environmental conditions and the possible effects of a proposed project in order to make the best project decision in terms of meeting the intended transportation need, the goals of an area or community, and for protection and enhancement of the environment. Often the project decision requires that the project be modified to avoid or minimize impacts to sensitive resources identified during the environmental studies. At other times, mitigation measures are made part of the proposal. Furthermore, it is FHWA policy to seek opportunities to go beyond traditional mitigation and implement innovative enhancement measures to help the project fit harmoniously within the community and the natural environs.

Consideration of existing environmental conditions and the potential for a proposed project to negatively or positively affect or impact the human environment actually begins much earlier with the statewide and metropolitan planning processes. (See discussion in previous section relating to planning). The project development process begins where planning ends and is continued through all other developmental phases, such as, final design, and right-of-way acquisition.

Consideration of environmental effects is necessary for any project that proposes to use Federal funds, or which could require another action by the Administration (such as an Interstate system access approval) regardless of the size, type, cost, or purpose of the project. Different levels of environmental documentation and processing are available to satisfy the project development and NEPA compliance process for a particular

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project. The level of documentation or process selected depends on the significance of the environmental impacts which are directly, or indirectly the result of a project. Documentation and processing options are referred to as “classes of actions” in the FHWA/FTA environmental regulation. They are Environmental Impact Statements (Class I), Categorical Exclusions (Class II), and Environmental Assessments (Class III).

## B. Environmental Impact Statement

An EIS is prepared when it is determined through the planning process; environmental studies, public involvement, and coordination with other Federal, State, and local agencies that the project will have a significant impact on the environment. An EIS is typically prepared for new freeway projects and for highways of four or more lanes on a new location. The EIS process is the most involved, detailed, demanding, and formal type of process and document. It is also the least commonly used processing option for NEPA compliance in the project development process. The EIS requires a detailed and thorough consideration of all reasonable alternatives, including the no-build alternative; indepth analysis of the SEE effects that are associated with the alternatives; and involvement of the public and other Federal, State, and local agencies, not only in the process, but in the decisions related to the selection of a preferred alternative. The EIS process requires the preparation of a Notice of Intent (NOI), a Draft Environmental Impact Statement (DEIS), a Final Environmental Impact Statement (FEIS), and a Record of Decision (ROD).

The NOI is a notice published in the Federal Register that indicates that the FHWA is proposing to prepare an EIS. The NOI summarizes the purpose of the project, the range of alternative solutions to be studied, and known impacts or issues. The NOI is issued as part of a process, known as scoping, that attempts to identify issues, impacts, interests, alternatives, and analytical methods to be employed. Scoping involves engaging members of the general public, interested organizations, and affected agencies early in the project development process, so that issues can be identified and addressed systematically as the DEIS is being developed.

The DEIS should identify the location of the project, the makeup of the population and other characteristics of the affected neighborhoods or communities, the estimated number of residences and businesses that will be affected, and other potential and probable impacts for each alternative being considered. The DEIS should also present a detailed and thorough discussion of the analysis of all reasonable alternatives and the related SEE impacts and outline all measures to mitigate any adverse impacts.

The FEIS identifies the preferred alternative, provides a basis for comparison of the various alternatives considered, and describes mitigation measures likely to be implemented. After the FEIS has been available for public comment for at least 30 days, the FHWA issues a ROD that explains the basis for the decision and describes any commitments

that will be adhered to in implementing the project. The adoption of the FEIS and signing of the ROD by FHWA constitutes approval of the location and major design features. After the ROD is signed, the State may be authorized to proceed with development of the final engineering design plans and specifications; acquire rights-of-way; and advertise the project for receipt of construction bids.

## C. Categorical Exclusion (CE)

The CE is probably the most commonly used environmental processing option. The CE is not an environmental document, but a determination that a project will have no significant individual or cumulative SEE impacts. Therefore, there is no requirement for the preparation of an environmental document (EA or EIS), although environmental studies may be undertaken to support that the CE determination is proper. A list of project types that have been determined to meet the CE criteria and to have no significant impacts are provided in 23 CFR 771.117(c) and (d). Some of these activities, for example, are: utility installations; bicycle and pedestrian lanes, paths and facilities; installation of fencing, signs, and pavement markings; small passenger shelters; traffic signals; railroad warning devices; emergency repairs; improvements to rest areas and truck weigh stations; reconstruction or modification of an existing bridge structure on essentially the same alignment or location; minor modifications of an existing highway; and highway safety or traffic operation improvement projects.

## D. Environmental Assessment (EA)

The EA is prepared for projects when the significance of the impacts are not known or clearly established. Projects that are not categorical exclusions and do not obviously require an EIS will require the preparation of an EA to determine the significance of the impacts and whether an EIS should be prepared. The amount of information and degree of analysis that should be performed and included in an EA will depend on the size, type, location, number of reasonable alternatives, potential for significant impacts, and other factors of the project.

The EA should identify the location of the project, the makeup of the population and other characteristics of the affected neighborhoods or communities, the estimated number of residences and businesses that will be affected, and other potential and probable impacts for each alternative being considered. The EA may only require that one or two alternatives be considered, including the no-build alternative.

If the analysis of the SEE impacts, along with appropriate interagency coordination and public involvement, indicate that the action will not have any direct, indirect, or cumulative significant impacts, a Finding of No Significant Impact (FONSI) is prepared. The FONSI will finalize the EA process, document the decisions, and explain why the

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impacts are not considered to be significant. However, if it appears that there will be significant impacts, a NOI will be published in the *Federal Register* and a DEIS will be prepared.

In the cases where an EA is prepared, the preferred alternative may or may not be indicated as part of the analysis. The EA usually will focus the analysis on a preferred alternative but defer selection until it is determined whether or not an EIS will be needed.

All of the above environmental documents require FHWA concurrence and adoption.

## E. Selection

A preferred alternative will be selected from the range of alternatives presented in the DEIS or EA. The decision and selection of a preferred alternative should be based on how well the alternative will solve the transportation problems and meet the stated purpose and need identified and defined in the planning process. The potential for avoiding and minimizing SEE impacts that are likely to result from the implementation of a given alternative, must be considered for any proposed alternative regardless of its ability to satisfy the purpose and need or meet the transportation goals of a given area.

The preferred alternative will usually not be identified in the DEIS, and selection of a preferred alternative will be deferred until the results of the analysis are completely understood and the public has had an opportunity to comment. The decision will be documented in the FEIS.

Approval of the FEIS and subsequent ROD, or preparation of a FONSI by FHWA constitutes acceptance of the general project location and major design elements as described in the environmental documents. After completion of the project development process, the State may be authorized to proceed with development of the final engineering design plans and specifications, acquire rights-of-way and advertise the project for receipt of construction bids.

## F. Potential Title VI Issues and Suggested Mitigation of Adverse Impacts

The environmental study of project alternatives and impacts must include the consideration of mitigation measures for unavoidable impacts. Mitigation measures and other agreements that are made as part of the decision-making process must be documented and implemented. All projects and environmental studies, whether a CE, EA, or EIS, must include mitigation for environmental impacts regardless of significance. Environmental commitments, such as noise barriers, joint use facilities, replacement housing and others should be monitored to assure that these mitigative measures are included in the design plans, and the construction of the project.



Mitigation measures are provided to minimize the adverse impacts of a project. They may be identified in general terms during the planning process. Specific measures are identified in the Environmental Impact Statement during the project development phase and should be monitored during the remaining phases of the highway process. Some of mitigative measures are as follows:

- Restoration of circulation and pedestrian patterns for disrupted communities.
- Provision of relocation assistance and advisory services, replacement housing and payments for moving displaced families and businesses.
- Provision for maximum retention of existing trees and shrubs included in grading plans for ramp areas and along right-of-way.
- Provision for last resort housing.
- Provision of traffic control.
- Improvements in traffic signalization and street lighting.
- Establishment of priorities for employment, training and contracting opportunities for residents of the affected-community.
- Provision of noise barriers and buffer zones.
- Provision of landscaping.
- Functional replacement of publicly-owned facilities displaced by the project.
- Coordination with community development agencies to implement jointly funded initiatives.

## **Issues:**

### **1. *Whether public involvement was adequately solicited and considered.***

The public involvement performance specifications appear in the FHWA regulations implementing the NEPA process (23 CFR 771.111(h)). The FHWA approves all State public involvement/public hearing procedures. The FTA has a different public involvement process under 23 CFR 771.111(i). Currently, the two agencies are discussing the possibility of revising the procedures to unify their environmental regulations and to include public involvement. The chief difference between public involvement during planning/programming and during project development is that a public hearing or the opportunity for a public hearing is required for certain projects as described in the regulations. Public hearings are scheduled late in project development just after release of the draft environmental impact statement or environmental assessment. This is before the decision-making reflected in the final environmental documents.

Just as in the planning and programming processes, the FHWA staff gives technical assistance to State highway agencies SHA's during development of their public involvement processes. Approaches to ensure adequate minority participation are similar to those discussed in public involvement processes in statewide and metropolitan planning, with

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the exception that public involvement is not required during development of public involvement procedures under the NEPA process.

The required public hearing (or opportunity for a public hearing) has often focused too much attention on a single public involvement event. Many SHA's agencies have supplemented hearings with public meetings; however, meeting formats tended to be formal like a public hearing. Public involvement is far more effective if it is scheduled early and continuously during project development and contact with the public is kept informal. Many SHA's now use the open forum public hearing format in which people gather information through an informal open house and make comments for the record one-on-one to a recorder. Under this format, a far higher percentage of hearing attendees make comments than under the traditional public hearing format.

Public involvement in project development is part of the NEPA process. Under ISTEA, FHWA retains oversight of the environmental process for all Federally-funded highway projects, including Surface Transportation Program projects. Division staff periodically observe selected public meetings and public hearings, particularly for controversial projects. Civil rights staff may also observe public meetings and public hearings. The section on Proactive Approaches under Public Involvement Processes in Statewide and Metropolitan Planning outlines specific items to observe. Observation of early meetings for projects with impacts in minority areas is more effective since technical assistance to the SHA on minority participation can then affect subsequent public involvement activities. A public hearing is very late in the project development process to discover that minority participation is low to non-existent.

Some division offices regularly conduct program reviews, including reviews of public involvement. Civil rights staff should provide themselves with the opportunity to participate in such reviews.

## ***Mitigation:***

- Develop a public involvement program, during the planning stage and continue during the project development process, to meet the needs of a particular community (e.g., minority, disabled, elderly).
- Use newsletters, speakers bureaus, and media to provide a consistent flow of information on project development status.
- Provide opportunity for public hearing after release of the DEIS or EA.
- Focus outreach on appropriate community to ensure involvement.
- Use informal contact which is more effective than a formal atmosphere for a public hearing.
- Experiment with informal open forum public hearing formats; allowing one-on-one comments to a recorder.

## 2. *Whether SEE impacts were adequately identified.*

The treatment of impacts to individuals, neighborhoods, and communities in environmental documents sometimes does not allow decisionmakers to focus on the issues of greatest concern to members of the community. As a result, avoidance, minimization, and mitigation strategies are not developed until after political action, administrative complaints, or lawsuits have focused attention and urgency on the real issues. Effective public involvement and agency coordination efforts can identify these concerns prior to the preparation of a DEIS or EA, so that appropriate analysis can be undertaken to assess the severity of the impacts and the potential for mitigation. The FHWA's 1996 handbook, *Community Impact Assessment: A Quick Reference for Transportation*, provides a framework for evaluating impacts to people.

### **Mitigation:**

- Identify beneficial impacts such as increased access to facilities/services and upgrading of affected communities.
- Identify adverse impacts such as:
  - Diminished access to facilities/services;
  - Disruption of community cohesion;
  - Disruption of people, businesses, and farms;
  - Changes in tax base and property values
  - Traffic;
  - Noise;
  - Relocation of residences and businesses; and
  - Diminished quality of the water, air, or natural environment used by residents.
- Develop mitigation and enhancement strategies based on public involvement and agency coordination.

## 3. *Whether the potential for disproportionate or discriminatory impacts has been adequately addressed.*

Project teams sometimes think that because there is no discriminatory intent on the highway agency's part, it is self evident that impacts of the various alternatives under consideration are not discriminatory or do not fall disproportionately on a particular segment of society. This can be a faulty assumption on some projects—an assumption that can lead to misunderstandings and mistrust. Therefore, it is important to be aware of the signs that a potentially discriminatory situation might exist. Such signs include:

- Demographics profiles that show whether the impacted population has a concentration of minority individuals;

# the project development process

- A history of impacts from governmental projects on a particular minority group or community in the project area. This might include not just highways projects but other governmental projects as well; and
- Complaints or assertions of disproportionate impacts that are unveiled during public involvement activities.

## ***Mitigation:***

- Community impact assessments should include compilation and analysis of demographic data, including breakdowns by characteristics protected under Title VI and related statutes;
- The project team should become aware of other actions that have occurred in the impacted area and of how these actions were perceived by members of the community;
- The project team should effectively utilize public involvement techniques to identify issues of discriminatory potential as early as possible in the project development process; and
- The project team should study avoidance, minimization, mitigation, and enhancement strategies, working with the affected community on the specifics as a definite proposal begins to take shape.

## A. General

While the project development phase of the highway process is in progress, the right-of-way phase is initiated. Title VI requirements of nondiscrimination apply during all phases of the right-of-way process (See 49 CFR, Part 21 in Appendix C). Certain activities, such as preparation of an abstract of title and consideration of hardship and protective buying, may be underway while the environmental documents are being processed. The design work must be finished and, if people are affected, relocation planning must be completed before proceeding with actions which will cause displacement. Right-of-way functional activities include appraisal of all properties to be purchased, negotiation with the property owners, acquisition of the property, management of the property acquired, relocation of people and businesses, and the adjustment of utilities. Replacement housing must be made available to all displaced persons before FHWA authorizes advertising for construction bids. After right-of-way has been obtained and upon completion of the project development phase, the construction phase may begin.

## B. Appraisals

Right-of-way activity involves appraisal of properties that are impacted by highway construction. The appraisal provides the basis for payment to a property owner.

The appraiser estimates the fair market value of real property on the basis of objective information and analysis. Objectivity requires that data collection, analysis, and reconciliation be conducted in an unbiased manner.

The estimate of fair market value must reflect market activity. It represents the price that a property would sell for under typical circumstances. The appraisal presumes that no undue pressure exists for either the buyer or seller.

The appraisal examines and considers all legal and relevant issues that may influence the value of a particular property. The appraisal is prepared by an appraiser who must act independently and impartially.

Appraisal activity must comply with Title VI, Nondiscrimination-in Federally Assisted Programs and Title VII, Equal Employment Opportunity when Federal funds are used for a highway project.

When contract appraisers are hired, the contracting and assignment process must be done without restriction as to race, color, national origin, sex, age, or disability. Available and qualified minority and/or disadvantaged appraisers must be included in the hiring process. Excessive qualifications standards may impose unacceptable barriers.

Information gathering, analysis and reporting must be objective, without regard to race, color, national origin, sex, age, or disability.

# right-of-way

Some examples of how appraisal reports may reflect bias are by including unfounded statements, inappropriate data, prejudicial analysis or misleading conclusions. Such practices are unethical and illegal. The same concerns may apply to appraisal review reports.

## C. Appraiser Qualifications

Each SHA has minimum appraisal education and experience requirements, All States have State appraiser certification and licensing. In some States these may be mandatory, in others, voluntary. Agencies may prequalify appraisers for inclusion on an approved list according to minimum requirements.

Outreach activities such as on-the-job training and subcontracting through qualified firms may be encouraged for Disadvantaged Business Enterprises (DBEs) that cannot meet the qualification requirements.

## D. Acquisition

Acquisition is one of the most sensitive parts of an Agency's effort in the construction of a highway since it involves direct personal contact with the public and may have a substantial impact on people's lives.

To complete the acquisition process, an agency must fulfill the following requirements by law:

1. Make a prompt written offer to the property owner for the full amount the agency believes is just compensation.
2. Provide the owner with the offer in a written statement that must include the amount established by the agency as just compensation along with a summary of the basis for the offer.
3. Before requiring the property owner to surrender possession of their property, the agency shall pay the agreed purchase price or deposit with the court, for the benefit of the owner, an amount no less than the Agency's approved appraisal of the fair market value or the court award of compensation determined in the condemnation proceeding for the property.
4. Offer to acquire any uneconomic remnants.

The offers to purchase property are established by appraisals and are generally made in person. The agency must make every reasonable effort to acquire the property by negotiation. The owner must be given reasonable opportunity to consider the Agency's offer and to present any information that is considered relevant to determining the property's value.

When an agreement on the sale of the property cannot be reached, the agency can institute formal condemnation proceedings to acquire the property by exercising the power of eminent domain.

After a settlement has been reached with the property owner either through negotiation or condemnation, the agency prepares the necessary documents required by law for transferring the title to close the transaction. This function is handled by the Agency's staff attorney, fee attorney, or other qualified person. The transfer may require the payment of some incidental expenses by the owner. These incidental expenses are generally reimbursable by the agency.

## E. Relocation

To meet Title VI requirements, all relocation services and payments must be provided without discrimination. In determining the location of replacement properties made available to the displacee, the State must also ensure that the selection process is conducted without discrimination. Contracts for providing relocation services must contain the provisions of Appendix A of the Title VI Assurances.

Persons who are required to move from their homes for a Federal or federally-assisted project must be provided advisory assistance by State Highway Agencies in relocating to decent, safe, and sanitary replacement dwellings. Owners and tenants of displaced businesses, farms, and non-profit organizations are to be provided similar assistance in obtaining suitable replacement properties.

Advisory assistance includes those measures and services necessary to determine the relocation needs and preferences of persons displaced and an explanation of the relocation payments and other assistance for which such persons may be eligible. Assistance also includes providing current and continuous information; on the availability, purchase prices, and rental costs of comparable dwellings or suitable replacement properties for businesses, farms or non-profit organizations.

Relocation benefits provided to displacees includes the provision of relocation payments. Examples of such payments include replacement housing payments, rental supplements, moving cost payments, and business reestablishment expense reimbursement.

When comparable replacement housing is not available, or is not available within the financial means of the person displaced, the State may provide such housing under Last Resort Housing provisions. Methods of providing housing under this provision may include, but are not limited to, the following:

1. A replacement housing payment in excess of statutory limits.
2. Rehabilitation of an existing replacement dwelling.

# right-of-way

3. Construction of a new replacement dwelling.
4. Providing a direct loan.
5. Purchase of land and/or the replacement dwelling by the displacing agency and a subsequent sale or lease to the displaced person.
6. Removal of barriers to handicapped displacees.
7. Where cost effective, change in status of displace from tenant to owner.

In addition to prohibitions against discrimination, the relocation regulations also provide affirmative provisions to ensure equal treatment of displacees and to ensure that assistance will be given to those in special need. Examples of these provisions are as follows:

- When possible, without the expenditure of a larger payment than is necessary to relocate to comparable housing, minorities will be given the opportunity to relocate to replacement dwellings not located in areas of minority concentration, that are within their financial means.
- All persons, especially the elderly and disabled, shall be offered transportation to inspect housing to which they are referred.

## F. Property Management

Property management refers to managing and administering property acquired for highway purposes so that the public interest is served. This property is often called highway airspace and is defined as that space located above, at, or below the highway's established guideline, lying within the approved right-of-way limits. Lands acquired for a highway project that are no longer needed for highway or transportation use are called excess property.

Property management involves a variety of responsibilities that include the rental and/or clearance of improvements from the highway right-of-way, access control to the highway facility, the lease of highway airspace, and the disposal of excess property.

The Federal policies for administering the property management program apply to all State and political subdivisions that manage highway real property acquired with Federal funds.

## G. Special Right-of-Way Program Areas

There are several special program areas where the Office of Real Estate Services has responsibilities. These programs are the Outdoor Advertising Controls, Functional Replacement, and Right-of-Way Research.



The Outdoor Advertising program involves the control of billboard signs along controlled highways outside of the highway limits. States are responsible for the removal of illegal and nonconforming signs as determined by State law.

The Functional Replacement program was developed to provide a method of acquiring and compensating for publicly owned property providing essential public service. Through this program publicly owned land and/or improvements may be functionally replaced with a facility of equivalent functional utility to that acquired for the highway project. Examples of the public properties replaced under this program are schools, police and fire stations, and local parks.

## H. Potential Title VI Issues and Suggested Mitigation of Adverse Impacts

### *Appraisal/Appraisal Review Issues:*

1. Whether there is diversification in the use of appraisers.

**Mitigation:** Expand the pool of qualified fee appraisers via aggressive outreach.

2. Whether the selection of comparable sales and rental properties reflects discrimination and stereotypes.

**Mitigation:** Maximize quality of appraisal reviews (training, selection of fee/staff appraisers, qualified review appraisers, etc.).

3. Whether adjustments to the comparable sales and rental properties reflect discrimination.

**Mitigation:** Same as above.

4. Whether there is consistency in the determination of severance/consequential damages.

**Mitigation:** Same as above.

### *Negotiation/Acquisition Issues:*

1. Whether every effort was made to negotiate for required property before filing condemnation.

**Mitigation:** Ensure compliance with regulatory requirements prior to institution of condemnation proceedings.

2. Whether property owners were fully informed of their rights to receive just compensation for their property before any donation of such property.

**Mitigation:** Ensure the parcel record documents the basis for donations and notification of entitlement to just compensation.

3. Whether the offer was made for the full amount of the review appraiser's determination of compensation.

**Mitigation:** Ensure consistency in the implementation of negotiation procedures.

4. Whether there is consistency in the application of minimum payment policy.

**Mitigation:** Ensure that policy is applied uniformly from project to project.

***Relocation Advisory Assistance and Payment Issues:***

1. Whether relocation advisory assistance was provided equitably and without discrimination to displaced individuals.

**Mitigation:** Ensure diversification of relocation staff; obtain feedback from displaced individuals; conduct appropriate needs assessment; conduct self evaluations, etc.

2. Whether the selection of comparable replacement housing is fair, consistent, and without discrimination.

**Mitigation:** Same as above.

3. Whether decent, safe, and sanitary inspection standards are consistently applied.

**Mitigation:** Training; diversification of staff; self evaluations, etc.

4. Adequacy of personal contacts.

**Mitigation:** Ensure diversification of relocation staff; appropriate needs assessment; sensitivity training; self evaluations, etc.

***Properly Management Issues:***

1. Whether the determination of rent amounts is equitable.

**Mitigation:** Diversification of staff; training; self evaluations, etc.

2. Whether the procurement of bids provides equal opportunity.

**Mitigation:** Aggressive outreach; removal of barriers, etc.

3. Whether the maintenance of rental properties on projects is adequate and consistently performed for all renters.

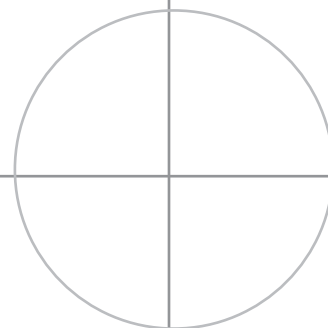
**Mitigation:** Self evaluations; tenant feedback; referral services, etc.

## A. FHWA Approval and Oversight

In the past, our FHWA field offices were traditionally closely involved in the development, approval, and oversight of Federal-aid construction projects. However, with the gradual completion of the Interstate system and the gradual downsizing of our agency, beginning in the early 1980's, oversight and approval actions were becoming more and more our grant recipient's direct responsibility. Prior to the Intermodal Surface Transportation and Efficiency Act (ISTEA) of 1991, FHWA had already established mechanisms which began shifting this responsibility. These mechanisms included the use of certification acceptance plans, secondary road plans, and various other streamlining and consolidation efforts to enhance Federal-aid program delivery. After ISTEA amended 23 U.S.C., the Federal-aid construction program responsibility was further shifted by giving State highway agencies (SHA) increased abilities to be exempt from FHWA oversight, approval, and regulatory compliance on specific categories of Federal-aid projects. However, any waiver on regulatory policies were, in general, not applicable when they pertained to Non-Title 23 matters (i.e., DBE program, labor compliance, Equal Employment Opportunity (EEO) provisions, etc.), or pertained to Title 23 provisions which involved the competitive bidding process.

States, under ISTEA, now have several options through which they may exempt themselves from FHWA oversight and/or required FHWA approval actions. Under these various options the SHA is essentially acting on behalf of the FHWA, adhering to the many requirements and performing the functions that were once the direct responsibility of our division field offices. The following are the options available to the States and a brief description of each:

- **Certification Acceptance (CA):** This option requires the State to establish and follow procedures to administer the Federal-aid program through an approved CA plan. These plans must be reviewed and approved by FHWA and must comply with all Title 23 and non-Title 23 statutory requirements. If the CA plan does not address a particular pertinent FHWA policy, then the State must follow established FHWA policy.
- **Exempted National Highway System (NHS) Projects:** This option is different from CA in that States must follow all applicable statutes, regulations, and policies. However, this option is similar to CA in that many of the approval actions by FHWA are delegated to the States.
- **Exempted Non-NHS Projects:** This option allows States to follow their own policies or procedures, unless they pertain to non-Title 23 requirements or Title 23 requirements involving the competitive bidding process. If State policies or procedures do not address a particular pertinent FHWA policy, then the State must follow established FHWA policy.



## B. Project Development

The creation of a Federal-aid construction project begins with field reviews, need assessments, planning, and preliminary engineering. Once a project is conceived in general scope, work begins on the preliminary design to establish appropriate parameters to address the need or problem within established constraints. These constraints can be functional, geometric, environmental, as well as budgetary. Once the design parameters have been finalized, the SHA begins preparation of the plans, specifications, and estimate (PS&E) for the project.

## C. Federal-aid Contract Provisions

Federal-aid construction contracts contain required contract provisions, as stipulated in Form FHWA-1273. The provisions contained in Form FHWA-1273 are generally applicable to all Federal-aid construction projects and must be made a part of, and physically incorporated into, all contracts as well as appropriate subcontracts and purchase orders. These required contract provisions contain requirements that prohibit discrimination; provide for EEO; require payment of predetermined minimum wages; stipulate subcontracting requirements and limitations; mandate compliance with health and safety standards at the work place, and require compliance with all appropriate environmental regulations among the noted provisions. The FHWA-1273 also contains a number of certification/provision requirements including non-collusion, lobbying, and suspension/debarment.

In addition, Federal-aid contracts must also contain Buy America, DBE special program provisions and, unless exempted by State statute or promulgated by its own developed provision, must include a standardized changed-site condition clause. On contracts that stipulate specific DBE goals, the successful bidder must either meet the goals or demonstrate that he/she has made a good faith effort to meet them. When there are no DBE goals specified, the contractor may solicit bids from any number of subcontractors, but is required to provide DBEs the maximum opportunity to participate in subcontract and procurement bid process whenever possible. Also on selected Federal-aid contracts, SHAs can have provisions for on-the-job (OJT) training and Indian preference.

## D. Project Authorization and Advertisement

Competitive bidding by private businesses (i.e. contractors) is basic to the Federal-aid highway construction program. The intent of this policy is to eliminate the unfair advantage that public agencies may have relative to available resources, to provide equal economic opportunity for all qualified contractors, and to permit projects to be completed at the lowest possible cost.

A project may only be advertised for bids from prospective contractors after PS&E approval and project authorization to proceed to the construction phase. This is typically documented through the preparation of an FHWA Form-1240 (Letter of Authorization) or adopted equivalent. This authorization to proceed is based on the following assurances:

- That all right-of-way clearances, utility, and railroad work either have been completed, or that arrangements have been made for coordination during construction,
- That all matters involving the relocation of individuals and families when such circumstances exist have been properly addressed,
- That all the requirements pertaining to the public involvement/hearing process and the location and design approval process have been satisfactorily addressed,
- That where applicable, required area-wide agency reviews, requirements and issues (i.e., clearing-houses) have been accomplished appropriately, completed, and/or resolved.

All SHA advertising policies and practices must assure free and open competition. This also relates to requirements and practices involving the following:

- Licensing, bonding, prequalification and bidding
- Title VI, nondiscrimination assurances with regard to age, race, color, sex, national origin or disability.

Contracts are normally advertised in newspapers, trade journals, or other appropriate media to reach a wide audience, attract greater attention, and enhance competition. Normally the minimum advertisement period is 3 weeks. However, there can be exceptions when circumstances warrant shorter periods. This period can also be longer for more complex projects, especially those with scheduled pre-bid meetings to address prospective contractors' concerns and questions.

Addendums to an advertised contract may be issued to correct plan and/or specification errors or to append more current contract document items such as revised wage rate schedules, certified DBE firm lists, etc. The advertisement period can be extended for up to 10 calendar days in order to give prospective contractors time to receive addendums, review project changes and additions, and to correct/change their bid submissions.

## E. Bid Opening

The contractors submit sealed bids which are opened at bid opening, often referred to as the "bid letting." The bid opening is a public forum for the announcement of all bids, and is the point in time where the bids are opened and read aloud. The bid opening is also the time given in the advertisement period as the last moment that bids can

be accepted. For the bidder, the reading of the bids confirms whether his/her bid is successful. For the SHA and the general public, this forum establishes the apparent low bidder and the range of bids received for the given project.

Federal policy requires that all bids be opened publicly and read aloud either item-by-item or by total amount. If a bid is not read, the bidder is to be identified and the reason for not reading the bid announced. Reasons for not reading a bid will either be the result of a bid itself being non-responsive, often called “irregular,” or a bidder is determined to be not responsible.

The SHAs bidding documents should clearly identify those requirements which the bidder must assure are complied with to make the bid responsive. Reasons for finding a bidder not responsible may include:

- Failure to meet the SHAs qualification requirements, or
- Suspension or debarment by a State/Federal agency.

A successful bid opening should identify the responsible bidder submitting the apparent lowest, responsive bid.

## **F. Bonding, Licensing & Prequalification**

Most States require that the contractors submit a bond (i.e., Bid Bond, Payment Bond, Performance Bond, etc.) or other security with the bid. Upon submission of bid, the contractor provides a certified check or negotiable instrument which ensures the contractual document will be executed in the specified time.

Generally, contractor qualification, whether prequalification or post qualification, consists of an evaluation of the contractor’s experience, personnel, equipment, financial resources, and performance record. If a State has a prequalification requirement, the evaluation is normally performed annually. Once deemed prequalified, a contractor may be further rated for contract value in a given classification, such as general highway construction, grading and minor structures, grading and paving, or miscellaneous specialty items. The information required for prequalification may be extensive and can also serve as a basis for subsequent bid rigging investigations.

The FHWA does not require the SHAs to implement procedures or requirements for prequalification, qualification, bonding, or licensing, on Federal-aid projects. However, if the SHAs have such procedures or requirements, they must conform to the FHWA competitive bidding policy.

All proposed procedures/requirements/changes are to be submitted to FHWA for advance approval. No procedure/requirement may operate to restrict competition, prevent submission of a bid, or prohibit consideration of a submitted bid from a responsible contractor, whether resident or non-resident. Thus the requirements

must be uniformly applied to all the contractors (including DBE contractors).

No contractor is to be required to obtain a license before a submission of a bid or before the bid may be considered for award of a contract. The SHA may require licensing of contractors after the bids are opened, if the requirement is consistent with competitive bidding principles.

In regard to prequalification of contractors, such requirements may be imposed as a condition for submission of a bid or award of contract only if there is sufficient time between the date of advertising and the date of the bid opening to allow a bidder to obtain the required prequalification rating.

## **G. Bid Analysis and Contract Award**

The engineer's estimate should be accurate and credible, based on realistic current data, and in general, kept confidential. The SHA should have written procedures for justifying the award of a contract, or rejection of the bids, when the low bid appears excessive. Bid analysis is the process performed to justify the award or rejection of bids.

A proper bid analysis better assures that good competition and the lowest possible cost were received and ensures that funds are being used in the most effective manner. The bid analysis process is an examination of the unit bid prices for reasonable conformance with the engineer's estimated prices. Beyond the comparison of prices, other factors that a bid analysis may consider include:

- Number of bids
- Distribution or range of the bids
- Geographic location of the bidders
- Urgency of the project
- Unbalancing of bids
- Current market conditions and workloads
- Potential for savings if the project is re-advertised
- Comparison of bid prices with similar projects in the letting
- Justification for significant bid price differences.

Not all these factors need to be considered for bids that indicate reasonable prices or show good competition. However, when the low bid exceeds the engineer's estimate by an unreasonable amount, a more thorough analysis should be undertaken to justify award of the contract. In order to justify award of a contract, a bid analysis should provide answers to the following questions:

- Was competition good?
- Is the project essential and would deferral be contrary to public interest?
- Would re-advertisement result in higher bids?
- Is there an error in the engineer's estimate?

Sometime after the bid opening, an award meeting is scheduled to formalize a contract award determination. An adequate time frame is required to get the bid tabulations reproduced and distributed to the appropriate personnel within the SHA and FHWA, as applicable, for review and award concurrence determinations prior to the actual award meeting. States vary this established time frame to award the contract after opening of bids. However, awards shall be within a predetermined time limit established by the SHA and subject to prior concurrence by FHWA. Usually this time limit is specified in the State's standard specifications.

During the award meeting the projects may be awarded, rejected, or held for further details and study. If all bids are rejected, the delay is added to the project by pushing it back to the re-advertisement stage or beyond if other changes in the project plans and documents need to be addressed.

FHWA requires a concurrence in award to a responsible bidder with the lowest responsive bid. FHWA further requires the concurrence to be formally documented in writing and include any qualifying statements concerning the concurrence. Concurrence is also required in the rejection of the low bidder or the rejection of all bidders.

## H. Notice of Award and Execution of the Contract

After the award is made, the contractor is advised by a "Notice of Award." A copy of this award is sent to the appropriate SHA field office in order that appropriate plans for staffing, supervision, and project control can be arranged. The Notice of Award, the contract, and the contracting bonding forms are sent to the contractor for his/her surety company. These executed documents are to be returned, usually within 15 to 30 calendar days from the date of award, including all evidence of appropriate insurance. If the contractor fails to execute the contract and file a performance bond within this allotted timeframe, a cause for annulment of the award has been established. The proposal guaranty is forfeited to cover liquidated damages. The award may now be made to the next lowest bidder or re-advertised as determined by the SHA and concurred by FHWA.

Immediately following the award, the appropriate SHA field offices can schedule a preconstruction conference. This conference is typically scheduled 30 calendar days after the award date, which is usually 10 extra calendar days after the Notice of Award



period. The purpose of this conference is to permit advance control planning by the State, to permit discussion of known and potential major problems before they occur, to let the contractor know the scope and status of agreements, to analyze agreements based on proposed operations, to outline the sequence of operations, to coordinate the efforts and schedules of the agencies concerned, and to introduce department personnel who will be assigned to the project. The contractor, his/her superintendent, or his/her authorized agent are to be present at this conference and are to present the proposed schedule of work, list of proposed subcontractors, if any, and a list of suppliers from whom materials are anticipated to be purchased. Subcontractors may be invited to attend the reconstruction conference.

Current FHWA policy requires that the prime contractor perform at least 30 percent of contract work with its own organization. The SHAs may be more restrictive and specify a higher percentage if they so desire. The FHWA further requires each subcontract to be approved in writing by the SHA. This allows some control to screen subcontractors that are not qualified or that may be ineligible (e.g., debarred). It also assures that all Federal and State requirements will be included in the subcontract.

At the preconstruction conference or shortly thereafter a "Notice to Proceed" is issued to the contractor once all requirements and forms have been properly completed by the contractor. This notice stipulates the date on which it is expected the contractor will begin the construction and from which date the contract time will be charged.

## **I. Construction Project Administration and Project Monitoring**

Contract time, as well as the construction work itself, usually begins 10 to 30 calendar days after the date of the preconstruction conference. This time is given to the contractor in order to allow him/her adequate time to mobilize equipment, materials, and personnel. The time frame can be longer depending on the nature of the project, particularly if time is needed to order specialty/custom-manufactured materials.

Once contract time has started, progress payments can start being received as early as two weeks to one month into the project's construction. However, payments received are a function of the value of work completed.

Title 23, Section 302 requires the SHAs to be suitably equipped and organized to carry out the Federal-aid program. Projects are required to be completed in accordance with approved plans and specifications, thereby assigning responsibility to the SHA. Therefore, it is the responsibility of the SHA to administer a Federal-aid construction contract.

Adequate construction personnel should be provided to ensure that quality highways are constructed. State project engineers and inspecting technicians monitor the construction work to ensure compliance with the contract plans and specifications.

# construction

The monitoring work also includes the sampling and testing of all materials for acceptance, as well as the monitoring and enforcement of required mitigative measures included in the environmental documents and agreements. This monitoring further includes the labor compliance, EEO provisions, DBE program requirements, etc.

The FHWA's role in this phase of a construction project can include periodic on-site inspections to monitor the State's control of the work or be included as part of a broader process review. The level of Federal oversight/presence will be a function of the extent of exceptions the State has elected to take (as noted in the discussion of the first section) and the division offices stewardship plan.

When construction is completed, final inspections are made by the State and FHWA, when appropriate. If the construction is completed in reasonably close conformance with the approved plans and specifications, including all authorized changes and extra work orders, the State and FHWA can grant final acceptance of the project.

## J. Title VI Federal-aid Construction Contract Requirements

Federal-aid construction contracts must include provisions which require compliance with Title VI. The specific contract provision language is included in Form FHWA-1273. The specific provisions related to Title VI are covered under Sections II and III. Form FHWA-1273, Required Contract Provisions, is a convenient collection of contract provisions and proposal notices that are required by regulations promulgated by the FHWA and other Federal agencies. Copies of the current version of FHWA Form-1273 and FHWA Form 1273A are included in Appendix F.

The provisions contained in Form FHWA-1273 are generally applicable to all Federal-aid construction projects and must be made a part of, and physically incorporated into, all contracts as well as appropriate subcontracts and purchase orders. An alternate format of the required contract provisions may be used for projects authorized under Certification Acceptance (CA) procedures as well as exempted non-NHS projects. However, required contract provisions based on other than Title 23 requirements cannot be changed.

State highway agencies (SHA's) are not permitted to modify the provisions of FHWA Form FHWA-1273. Minor additions covering State requirements may be included in a separate supplemental specification, provided they do not conflict with State or Federal laws and regulations and do not change the intent of the required contract provisions.

The FHWA Form-1273 provisions apply to all work performed on the contract including work performed by subcontract. The FHWA Form-2273 provisions are required to be physically incorporated into each subcontract and subsequent lower tier subcontracts and may not be incorporated by reference. The prime contractor is responsible for

compliance with the FHWA Form-1273 requirements by all subcontractors and lower tier subcontractors. Failure to comply with the Required Contract Provisions may be considered as grounds for contract termination.

## Section II - Nondiscrimination

The provisions of Section II of FHWA Form-1273 are derived from the basic statutory authority of Title VI of the Civil Rights Act of 1964, and are implemented by 23 CFR 200. Section II applies to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.

The provisions of Section II promulgate Title VI mandates that basically do not allow any Federal assistance to be used to discriminate. Through expansion of this mandate and the issuance of parallel legislation, the prescribed basis of discrimination include race, color, sex, national origin, age, and disability.

Title VI assures that the SHA's guarantee that no person is subjected to discrimination in connection with any activity, including any contract, for which the State receives Federal assistance. In the event of noncompliance by a contractor and/or subcontractor, payment may be withheld or the contract may be canceled in whole or in part.

Section II of the FHWA Form-1273 is essentially the Standard EEO Construction Contract Specifications, as included in 23 CFR 230, Subpart A. The goal of EEO is increased participation of minorities and women in the work force, and extends to contractor practices in recruitment, hiring, pay, training, promotion, and retention.

## General-Guidance

Guidance on Title VI is fairly simple in that no person, firm, or other entity is to be subjected to discrimination because of race, color, religion, sex, national origin, age, or disability. The nondiscrimination provisions extend to the contractor's employment practices, solicitations for employment, selection of subcontractors and suppliers, and procurement of materials.

### ***1. FHWA Form-1273 Sections II.1 - II.9.***

***Section II.1*** Requires the contractor to have an EEO policy that prohibits discrimination and provides for affirmative action in employment practices. The contractor shall adopt the following statement as his operating policy:

"It is the policy of this company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color national origin, age, or disability. Such action shall include: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

# construction

Affirmative action is defined as a good faith effort to eliminate past and present discrimination and to ensure that future discriminatory practices do not occur. Actions aimed at addressing under-representation of minorities and women are outlined in the “Sixteen Steps” in 41 CFR 60.

**Section II.2.** Requires the contractor to have a designated EEO Officer who has the responsibility and authority to administer the contractor’s EEO program.

**Section II.3.** Requires all of the contractor’s employees who have an active role in the hiring, supervision, or advancement of employees to be aware of and to implement the contractor’s EEO policy. In addition, it is required that employees, including applicants and potential employees, be informed of the contractor’s EEO policy through posted notices, posters, handbooks, and employee meetings.

**Section II.4.** Mandates the contractor not to discriminate in his recruitment practices and to make an effort to identify sources for potential minority and women employees.

**Section II.5.** Requires the contractor to periodically review project sites, wages, personnel actions, etc., for evidence-of discriminatory treatment, The contractor is to promptly investigate all alleged discrimination complaints.

**Section II.6.** Requires the contractor to advise employees and applicants of training programs available and to assist in the improvement of the skills of minorities, women, and applicants, through such programs.

**Section II.7.** Deals with labor unions in that the contractor is not, and cannot be, required to hire union employees; however, if the contractor relies on unions as a source of employees, the contractor is encouraged to obtain cooperation with the unions to increase opportunities for minorities and women. The contractor is required to incorporate an EEO clause into union agreements.

**Section II.8.** Deals with the contractor’s EEO policy as it pertains to selection of sub-contractors, including material suppliers and equipment leasing companies. Contractors are encouraged to use DBEs or other subcontractors that employ minorities and women. Furthermore, contractors are required to exercise their best efforts to ensure that subcontractors comply with the EEO requirements.

**Section II.9.** Requires the contractor to prepare records that document compliance with the EEO policy and to retain these records for a period of 3 years after project completion. These records should include the number of minority, women, and non-minority employees in each work classification on the project, and the progress and effort being made to increase the employment opportunities for minorities and women.

The contractor is required to submit an annual EEO report to the SHA each July, for the duration of the project. If the project contains on-the-job training (OJT), this information is also required to be collected and reported.

## **2. Compliance Oversight**

Enforcement responsibilities have been vested with the contracting agency which ultimately falls on the shoulders of the SHA project engineer. The project engineer should be cognizant of the contractual requirement and observe the contractor for compliance. Specifically, the project engineer's concern should center on whether discriminatory practices take place, particularly in the hiring, firing, training, promotion, and utilization of employees.

Noncompliance with the EEO specifications may be considered a breach of contract for which payment may be withheld or the contract canceled. The State compliance staff should conduct reviews and make noncompliance determinations. In addition, reviews by the Office of Federal Contract Compliance Programs (OFCCP), or actions ordered by OFCCP, may affect the contractor's eligibility to participate in Federal-aid programs.

## **Section III- Nonsegregated Facilities**

The intent of the provisions of Section III of FHWA Form-1273 is to ensure that past discriminatory practices for providing separate facilities or prohibiting minorities access to certain facilities are eliminated. Section III, which is also derived from Title VI, applies to contractors, subcontractors, and material suppliers on all Federal-aid contracts and related subcontracts of \$10,000 or more.

By entering into a Federal-aid construction contract, organizations and firms are certifying that they maintain nonsegregated facilities that conform to requirements of 41 CFR 60.1.8. These regulations also require a prime contractor to obtain a similar certification from each subcontractor and supplier, as applicable.

## **K. Potential Title VI Issues and Suggested Mitigation of Adverse Impacts**

### **Issues:**

1. Whether appropriate contract provisions are incorporated in Federal-aid contracts.

**Mitigation:** Process reviews.

2. Whether the monitoring/inspection of work by the State results in disparate treatment of protected groups.

**Mitigation:** Process reviews; training; diversification of staff, etc.

# construction

3. Whether required mitigation measures have been effectively implemented, i.e, safety through construction zones; noise and air impacts; employment and contracting goals, etc.

**Mitigation:** Process reviews; feedback from public involvement; coordination with public interest groups, etc.

4. Whether barriers exist in pre-qualification, approval of subcontractors, bonding, and licensing requirements.

**Mitigation:** Process reviews; survey subcontractors; supportive services; self evaluations, etc.

5. Whether uniformity exists in the approval of plans changes, and supplemental agreements.

**Mitigation:** Process reviews; training; feedback; supportive services, etc.

6. Whether uniformity exists in the assessment of sanctions, liquidated damages, withholding payments, suspension/termination of contracts, and decertification.

**Mitigation:** Process reviews; training; feedback, etc.

## A. Description of Research Program

The States are encouraged to conduct transportation-related research projects which may be funded with Federal-aid funds. The research may be conducted by State personnel or contracted to universities or consultants who have the capabilities and staff to perform the research.

A research project usually begins with a solicitation of problem statements. The problem statement provides a brief description of the proposed research, need for the research, and estimated cost. The problem statements are then prioritized by the State Transportation Agency. The projects may be undertaken by transportation agency personnel or awarded to a university or consultant according to the State's procurement regulations. If it is determined that a university will be used and more than one university has the capability, a request for proposal may be sent to the universities. The selection of a university to perform the research is usually predetermined based on type of research and area of expertise of the university. Minority universities interested in performing research for a transportation agency are encouraged to learn the procurement regulations for that agency and to submit proposals when there are studies proposed which they have the capability to accomplish.

Each research project awarded is monitored by State personnel and a principal researcher who is usually a member of the involved department at the university. University research may be actually conducted by university students under the supervision of the principal researcher. Not all research projects are engineering related; e.g., socio-economic, environmental, transit or transportation needs studies.

## B. Potential Title VI Issues and Suggested Mitigation of Adverse Impacts

### **Issues:**

1. Whether there is diversification in the selection of consultant/universities.

**Mitigation:** Aggressive outreach; supportive services; feedback; removal of barriers, etc.

2. Proposal/problem statement solicitation.

**Mitigation:** Same as above.



notice to public  
public involvement



# notice to public

U.S. Department of Justice regulations, 28 Code of Federal Regulations, Section 42.405, Public Dissemination of Title VI Information, require recipients of Federal financial assistance to publish or broadcast program information in the news media. Advertisements must state that the program is an equal opportunity program and/or indicate that Federal law prohibits discrimination. Additionally, reasonable steps shall be taken to publish information in languages understood by the population eligible to be served or likely to be directly affected by the program. Following is a sample public notice used by the California Department of Transportation.

California Department of Transportation hereby gives public notice that it is the policy of the Department to assure full compliance with Title VI of the Civil Rights Act of 1964, the Civil Rights Restoration Act of 1987 and related statutes and regulations in all programs and activities. It is our policy that no person in the United States of America shall, on the grounds of race, color, national origin, sex, disability or age be excluded from the participation in, be denied the benefits of or be otherwise subjected to discrimination under any of our programs or activities.

Any person who believes they have been subjected to unlawful discriminatory practice under Title VI has a right to file a formal complaint. Any such complaint must be filed in writing or in person with California Department of Transportation, Civil Rights, Office of Equal Opportunity, DCIU, 1823 14<sup>th</sup> Street, Sacramento, CA 95814, within one hundred-eighty (180) days following the date of the alleged discriminatory action.

The following information on public involvement are excerpts taken from the U.S. Department of Transportation, Federal Highway Administration's handbook entitled "Public Involvement Techniques for Transportation Decision-making." The handbook contains extensive methodologies for public involvement. The entire document can be obtained from the Internet at the following web address:

<http://www.fhwa.dot.gov/reports/pittd/cover.htm>

The Table of Contents for that document follows. Also following are formats other State Department of Transportation and Metropolitan Planning Organizations have used and have proven to be successful as highlighted by FHWA.

## Designing a Public Involvement Program

Developing an effective public involvement program is a strategic effort that requires assembling a selection of techniques to meet the needs of a given transportation plan, program or project. Whether designing a public involvement program for statewide or metropolitan planning or for an individual transportation investment, it is wise to pursue a systematic thought process based on fundamental guidelines and following a series of steps. The five guidelines are:

**1. *Acting in accord with basic democratic principles***

means that public involvement is more than simply following the law. People have opportunities to frame alternative solutions and affect final decisions in ways that respect the roles of decision-makers. Knowledge is the basis of such participation. Through continued interaction with the entire community, agencies build community support and, more importantly, assure that the public has the opportunity to help shape the substance of plans and projects. In summary, public agencies act as public servants.

**2. *Continuous contact between agency and non-agency people throughout transportation decision-making,***

needs to occur from the first thought of a transportation plan to post-construction operations and maintenance.

**3. *Use of a variety of public involvement techniques***

that target different groups or individuals in different ways or target the same groups or individuals in different ways.

**4. *Active outreach to the public***

means agencies search out the public and work hard to elicit response. However, transportation agencies have repeatedly found that going after the public and changing unsuccessful approaches brings greater results.

# public involvement

## **5. *Focusing participation on decisions***

rather than on conducting participation activities because they are required. Decisions include both the continuous stream of informal decisions made by agency staff and lower-level management and the less frequent formal decisions made by decision-makers. Timely agency response to ideas from the public and integration of ideas from the public into decisions shows the public that participation is worthwhile. A focus on the wide range of possible decisions gets agencies past simply offering the public passive opportunities to comment on proposals just before formal decision-making.

The following five steps form one approach to systematically setting up and implementing a public involvement program for a specific plan, program or project.

### **1. *Set goals and objectives for your public involvement program.***

The goals and objectives derive from the specific circumstances of a given transportation plan, program, or project. What decisions, formal or informal, are to be made? When? By whom? What public input is needed? Public input can be in the form of a consensus on a plan or a buildable project. Consensus does not mean that everyone agrees enthusiastically but that all influential groups and individuals can live with a proposal. Public input can be in the form of information used by staff or decision-makers. Agencies use the objectives to form the public involvement program. The more specific the objectives, the better they will guide the involvement program.

### **2. *Identify the people to be reached.***

The general public and those directly affected, such as abutting property owners, are some of those who should be reached. Review who is affected directly and indirectly, as well as those who have shown past interest. Look for people who do not traditionally participate, such as minorities and low-income groups. What information do they need to participate? What issues or decisions affect which specific groups or individuals? How can their ideas be incorporated into decisions? New individuals and groups appear throughout a public involvement program; there should be a way to identify and involve them. Conceptualize the public as a collection of discrete groups, individuals and the general public; each has different interests and different levels of energy for participation.

In addition to brainstorming and analysis by agency staff, ask members of the public for their input on goals, objectives and names of people who might be interested. This can be done simultaneously through key person interviews or focus groups or public opinion surveys.

### **3. *Develop a general approach or set of general strategies***

that are keyed to the goals and objectives of the involvement program and the characteristics of the target audiences. It could be visualized as a stream of different activities keyed to specific planning or project decisions. Alternatively, a general approach could be viewed as a focus on one or more public groups or interests. Be sure to check with members of the public for ideas on your general approach and whether the public to be reached finds the approach acceptable.

### **4. *Flush out the approach with specific techniques.***

Consult past experience for what works and does not work. Look at the handbook of Public Involvement Techniques for Transportation Decision-Making. For example, Chapter 2 presents a variety of approaches for meeting face-to-face with people. Look at the table of contents and browse the subjects that look interesting. Seek ideas from agencies who have had successful experiences with public involvement. Choose techniques that fit your specific purpose and your public. Target individual groups with appropriate techniques. Approaches that fit the general public often do not fit specific groups well and result in lack of attendance at meetings. Do not isolate groups; provide a way for them to come together and for the general public to review what groups have contributed. If participation is low or you need special approaches like computer simulations, look at Chapter 4.

### **5. *Assure that proposed strategies and techniques aid decision-making to close the loop.***

Ask agency staff the following questions: Are many people participating with good ideas? Are key groups participating? Is the public getting enough information as a basis for meaningful input? Chapter 1 has many ways to get information out to people. Are decision-makers getting adequate public information when it is needed? If a consensus is needed for decision-making, consensus-building techniques like negotiation and mediation (Chapter 3) or collaborative task forces (Chapter 1) may be useful. Ask participants who is missing from the participation process. How can missing participants be attracted? Do participants think discussion is full and complete? Do they think the agency is responsive? Continually evaluate and make mid-course corrections.



## NONDISCRIMINATION AGREEMENT

### **THE FEDERAL HIGHWAY ADMINISTRATION REGIONAL ADMINISTRATOR AND THE CALIFORNIA DEPARTMENT OF TRANSPORTATION**

*The California Department of Transportation (hereinafter referred to as the "Recipient") hereby agrees to comply with the following Federal statutes, U.S. Department of Transportation and Federal Highway Administration Regulations, and the policies and procedures promulgated by the Federal Highway Administration, as a condition to receipt of Federal funds.*

## TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Title VI of the Civil Rights Act of 1964 and related statutes provides that no person shall on the grounds of race, color, national origin, sex, age, and disability be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. The Civil Rights Restoration Act of 1987 amended Title VI to specify that entire institutions receiving Federal funds – whether schools and college, government entities, or private employers – must comply with Federal civil rights laws, rather than just the particular programs or activities that receive the funds.

Nondiscrimination programs require that Federal-aid recipients, subrecipients, and contractors prevent discrimination and ensure nondiscrimination in all of their programs and activities, whether those programs and activities are federally funded or not. If a unit of a State or local government is extended Federal-aid and distributes such aid to another governmental entity, all of the operations of the Recipient and subrecipient are covered. Corporations, partnerships, or other private organizations or sole proprietorships are covered in their entirety if such entity received Federal financial assistance (FHWA) Notice N 4720.6, September 2, 1992.

## ASSURANCES

**49 CFR PART 21.7**

The California Department of Transportation **HEREBY GIVES ASSURANCES**

1. That no person shall on the grounds of race, color, national origin, sex, age, and disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity conducted by the Recipient regardless of whether those programs and activities are Federally funded or not. Activities and programs which the Recipient hereby agrees to carry out in compliance with Title VI and related statutes include but are not limited to:

# assurances/agreements

## **ALL PROGRAMS AND ACTIVITIES OF THE RECIPIENT**

2. That it will promptly take any measures necessary to effectuate this agreement.
3. That each program, activity, and facility as defined at 49 CFR 21.23(b) and (e), and the Civil Rights Restoration Act of 1987 will be (with regard to a program or activity) conducted, or will be (with regard to a facility) operated in compliance with the nondiscriminatory requirements imposed by, or pursuant to, this agreement.
4. That these assurances are given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Recipient by the Federal Highway Administration under the Motor Carrier Safety Assistance Program and is binding on it, other recipients, subgrantees, contractors, subcontractors, transferees, successors in interest and other participants in the Motor Carrier Safety Assistance Program. The person or persons whose signatures appear below are authorized to sign these assurances on behalf of the Recipient.
5. That the Recipient shall insert the following notification in all solicitations for bids for work or material subject to the Regulations and made in connection with all Motor Carrier Safety Assistance programs and, in adapted form all proposals for negotiated agreements:

The Recipient, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 26 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex, age, disability in consideration for an award.

6. That the Recipient shall insert the clauses of Appendix A of this agreement in every contract subject to the Act and the Regulations.
7. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Act, the Regulations, and this agreement.

## **IMPLEMENTATION PROCEDURES**

**23 CFR PART 200**

This agreement shall serve as the Department of Transportation's Title VI plan pursuant to 23 CFR 200.



# assurances/agreements

For the purpose of this agreement, “Federal Assistance” shall include:

1. Grants and loans of Federal funds,
2. The grant or donation of Federal property and interest in property,
3. The detail of Federal personnel,
4. The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the Recipient, or in recognition of the public interest to be served by such sale or lease to the Recipient, and
5. Any Federal agreement, arrangement, or other contract which has, as one of its purposes, the provision of assistance.

***The Recipient shall:***

1. Issue a policy statement, signed by the head of the Recipient, which expresses its commitment to the nondiscrimination provisions of Title VI. The policy statement shall be circulated throughout the Recipient’s organization and to the general public. Such information shall be published where appropriate in languages other than English.
2. Take affirmative action to correct any deficiencies found by the Federal Highway Administration within a reasonable time period, not to exceed 90 days, in order to implement Title VI compliance in accordance with this agreement. The head of the Recipient shall be held responsible for implementing Title VI requirements.
3. Establish a civil rights unit and designate a coordinator who has a responsible position in the organization and easy access to the head of the Recipient. This unit shall contain a Title VI Equal Employment Opportunity Coordinator or a Title VI Specialist, who shall be responsible for initiating and monitoring Title VI activities and preparing required reports.
4. Adequately staff the civil rights unit to effectively implement the civil rights requirements.
5. Process complaints of discrimination consistent with the provisions contained in this agreement. Civil rights personnel trained in discrimination complaint investigations shall conduct investigations. Identify each complainant by race, color, national origin, sex, age, disability; the nature of the complaint, the date the complaint was filed, the date the investigation was completed, the disposition, the date of the disposition, and other pertinent information. A copy of the complaint, together



# assurances/agreements

with a copy of the Recipient's report of investigation, will be forwarded to the Office of Motor Carrier Safety within 60 days of the date the complaint was received by the Recipient.

6. Collect statistical data (race, color, national origin, sex, age, and disability) of participation in and beneficiaries of the programs and activities conducted by the Recipient.
7. Conduct Title VI reviews of the Recipient and subrecipient contractor program areas and activities. Revise where applicable, policies, procedures and directives to include Title VI requirements.
8. Conduct training programs on Title VI and related statutes.
9. Prepare a yearly report of Title VI accomplishments for the past year and goals for the next year.

**(a) Accomplishment Report**

List major accomplishments made regarding Title VI activities. Include instances where Title VI issues were identified and discrimination was prevented. Indicate activities and efforts the Title VI Specialist and program area personnel have undertaken in monitoring Title VI. Include a description of the scope and conclusions of any special reviews conducted by the Title VI Specialist. List any major problem(s) identified and corrective action taken. Include a summary and status report on any Title VI complaints filed with the Recipient.

**(b) Annual Work Plan**

Outline Title VI monitoring and review activities planned for the coming year; state by which each activity will be accomplished and target date for completion.

## SANCTIONS

In the event the Recipient fails or refuses to comply with the terms of this agreement, the Federal Highway Administration may take any or all of the following sanctions:

- (a) Cancel, terminate, or suspend this agreement in whole or in part.
- (b) Refrain from extending any further assistance to the Recipient under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the Recipient.
- (c) Take such other action that may be deemed appropriate under the circumstances, until the Recipient has accomplished compliance or remedial action.
- (d) Refer the case to the U.S. Department of Justice for appropriate legal proceedings.

# assurances/agreements

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## SIGNED FOR THE FEDERAL HIGHWAY ADMINISTRATION:

\_\_\_\_\_  
**MICHAEL G. RITCHI**

Division Administrator

Federal Highway Administration, California Division

\_\_\_\_\_  
**Date**

## SIGNED FOR THE RECIPIENT:

\_\_\_\_\_  
**JEFF MORALES**, Director

California Department of Transportation

\_\_\_\_\_  
**Date**

# appendix a

THE CALIFORNIA DEPARTMENT OF TRANSPORTATION (HEREINAFTER REFERRED TO AS THE “RECIPIENT”) HEREBY AGREES THAT AS A CONDITION TO RECEIVING ANY FEDERAL FINANCIAL ASSISTANCE FROM THE DEPARTMENT OF TRANSPORTATION, IT WILL COMPLY WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, 78 STAT. 42 U.S.C. 2000D-4 (HEREINAFTER REFERRED TO AS THE ACT), AND ALL REQUIREMENTS IMPOSED BY OR PURSUANT TO TITLE 49, CODE OF FEDERAL REGULATIONS, DEPARTMENT OF TRANSPORTATION, SUBTITLE A, OFFICE OF THE SECRETARY, PART 21, NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF TRANSPORTATION - EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 (HEREINAFTER REFERRED TO AS THE REGULATIONS) AND OTHER PERTINENT DIRECTIVES, TO THE END THAT IN ACCORDANCE WITH THE ACT, REGULATIONS, AND OTHER PERTINENT DIRECTIVES, NO PERSON IN THE UNITED STATES SHALL, ON THE GROUNDS OF RACE, COLOR, OR NATIONAL ORIGIN, BE EXCLUDED FROM PARTICIPATION IN, ARE DENIED THE BENEFITS OF, OR BE OTHERWISE SUBJECTED TO DISCRIMINATION UNDER ANY PROGRAM OR ACTIVITY FOR WHICH THE RECIPIENT RECEIVES FEDERAL FINANCIAL ASSISTANCE FROM THE DEPARTMENT OF TRANSPORTATION, INCLUDING FEDERAL HIGHWAY ADMINISTRATION AND FEDERAL TRANSIT ADMINISTRATION, HEREBY GIVES ASSURANCE THAT IT WILL PROMPTLY TAKE ANY MEASURES NECESSARY TO EFFECTUATE THIS AGREEMENT. THIS ASSURANCE IS REQUIRED BY SUBSECTION 21.7(A) OF THE REGULATIONS.

MORE SPECIFICALLY AND WITHOUT LIMITING THE ABOVE GENERAL ASSURANCE, THE RECIPIENT HEREBY GIVES THE FOLLOWING SPECIFIC ASSURANCE WITH RESPECT TO ALL PROGRAMS OR ACTIVITIES FOR WHICH THE RECIPIENT RECEIVES FEDERAL FINANCIAL ASSISTANCE:

1. IT IS AGREED THAT EACH “PROGRAM” AND EACH “FACILITY” AS DEFINED IN SUBSECTIONS 21.23(E) AND 21.23(B) OF THE REGULATIONS, WILL BE (WITH REGARD TO A “PROGRAM”) CONDUCTED, OR WILL BE (WITH REGARD TO A “FACILITY”) OPERATED IN COMPLIANCE WITH ALL REQUIREMENTS IMPOSED BY, OR PURSUANT TO, THE REGULATIONS.
2. THE FOLLOWING NOTIFICATION SHALL BE INSERTED IN ALL SOLICITATIONS FOR BIDS FOR WORK OR MATERIAL SUBJECT TO THE REGULATIONS AND MADE IN CONNECTION WITH ALL PROGRAMS AND, IN ADAPTED FORM IN ALL PROPOSALS FOR NEGOTIATED AGREEMENTS:

The California Department of Transportation, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be

# appendix a

afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

3. THE CLAUSES OF APPENDIX A OF THIS ASSURANCE SHALL BE INCLUDED IN EVERY CONTRACT SUBJECT TO THIS ACT AND REGULATIONS.
4. THE CLAUSES OF APPENDIX B OF THIS ASSURANCE SHALL BE INSERTED, AS A COVENANT RUNNING WITH THE LAND, IN ANY DEED FROM THE UNITED STATES EFFECTING A TRANSFER OF REAL PROPERTY, STRUCTURES, OR IMPROVEMENTS THEREON, OR INTEREST THEREIN.
5. THIS ASSURANCE EXTENDS TO THE ENTIRE FACILITY AND FACILITIES OPERATED IN CONNECTION THEREWITH WHERE THE RECIPIENT RECEIVES FEDERAL FINANCIAL ASSISTANCE TO CONSTRUCT A FACILITY, OR PART OF A FACILITY.
6. WHERE THE RECIPIENT RECEIVES FEDERAL FINANCIAL ASSISTANCE IN THE FORM, OR FOR THE ACQUISITION OF REAL PROPERTY OR AN INTEREST IN REAL PROPERTY, THE ASSURANCE SHALL EXTEND TO RIGHTS TO SPACE ON, OVER, OR UNDER SUCH PROPERTY.
7. THE APPROPRIATE CLAUSES SET FORTH IN APPENDIX C OF THIS ASSURANCE SHALL BE INCLUDED, AS A COVENANT RUNNING WITH THE LAND, IN ANY FUTURE DEEDS, LEASES, PERMITS, LICENSES, AND SIMILAR AGREEMENTS ENTERED INTO BY THE RECIPIENT WITH OTHER PARTIES:
  - (A) FOR THE SUBSEQUENT TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER ALL FEDERALLY-ASSISTED PROGRAMS OF THE U.S. DEPARTMENT OF TRANSPORTATION; AND
  - (B) FOR THE CONSTRUCTION OR USE OF OR ACCESS TO SPACE ON, OVER, OR UNDER REAL PROPERTY ACQUIRED, OR IMPROVED UNDER FEDERALLY-ASSISTED PROGRAMS OF THE U.S. DEPARTMENT OF TRANSPORTATION.
8. THIS ASSURANCE OBLIGATES THE RECIPIENT FOR THE PERIOD DURING WHICH FEDERAL FINANCIAL ASSISTANCE IS EXTENDED TO THE PROGRAM, EXCEPT WHERE THE FEDERAL FINANCIAL ASSISTANCE IS TO PROVIDE, OR IS IN THE FORM OF, PERSONAL PROPERTY, OR REAL PROPERTY OR INTEREST THEREIN OR STRUCTURE OR IMPROVEMENTS THEREON, IN

which case the assurance obligates the Recipient or any transferee for the longer of the following periods:

- (A) THE PERIOD DURING WHICH THE PROPERTY IS USED FOR A PURPOSE FOR WHICH THE FEDERAL FINANCIAL ASSISTANCE IS EXTENDED, OR FOR ANOTHER PURPOSE INVOLVING THE PROVISION OF SIMILAR SERVICES OR BENEFITS; OR

# appendix a

(B) THE PERIOD DURING WHICH THE RECIPIENT RETAINS OWNERSHIP OR POSSESSION OF THE PROPERTY.

9. METHODS OF ADMINISTRATION SHALL BE PROVIDED FOR THE PROGRAM AS ARE FOUND BY THE SECRETARY OF TRANSPORTATION OR THE OFFICIAL TO WHOM HE/SHE DELEGATES SPECIFIC AUTHORITY TO GIVE REASONABLE GUARANTEE THAT IT, OTHER RECIPIENTS, SUBGRANTEES, CONTRACTORS, SUBCONTRACTORS, TRANSFEREES, SUCCESSORS IN INTEREST, AND OTHER PARTICIPANTS OF FEDERAL FINANCIAL ASSISTANCE UNDER SUCH PROGRAM WILL COMPLY WITH ALL REQUIREMENTS IMPOSED OR PURSUANT TO THE ACT, THE REGULATIONS, AND THIS ASSURANCE.
10. IT IS AGREED THAT THE UNITED STATES HAS A RIGHT TO SEEK JUDICIAL ENFORCEMENT WITH REGARD TO ANY MATTER ARISING UNDER THE ACT, THE REGULATIONS AND THIS ASSURANCE.

THIS ASSURANCE IS GIVEN IN CONSIDERATION OF AND FOR THE PURPOSE OF OBTAINING ANY AND ALL FEDERAL GRANTS, LOANS, CONTRACTS, PROPERTY, DISCOUNTS OR OTHER FEDERAL FINANCIAL ASSISTANCE EXTENDED AFTER THE DATE HEREOF TO THE RECIPIENT BY THE DEPARTMENT OF TRANSPORTATION UNDER ALL PROGRAMS AND IS BINDING ON IT, OTHER RECIPIENTS, SUBGRANTEES, CONTRACTORS, SUBCONTRACTORS, TRANSFEREES, SUCCESSORS IN INTEREST AND OTHER PARTICIPANTS IN ALL PROGRAMS. THE PERSON OR PERSONS WHOSE SIGNATURES APPEAR BELOW ARE AUTHORIZED TO SIGN THIS ASSURANCE ON BEHALF OF THE RECIPIENT.

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**JEFF MORALES**  
DIRECTOR  
CALIFORNIA DEPARTMENT OF TRANSPORTATION

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**DATE**

# appendix a

## ***Federal Financial Assistance Contract Requirements***

This appendix applies to all Federal financial assistance contracts and must be included as a contract provision. Examples of such contracts in the Federal-aid highway program are:

- Construction contracts, both prime and subcontracts, and vendor/supply agreements.
- Consultant agreements for performance of work in connection with Federal-aid highway projects. Typical ones are those for design work and environmental studies.
- Research agreements with colleges, universities, or other institutions.
- Fee appraiser and fee attorney contracts in connection with Federally-aided right-of-way work.
- Contracts between a State Highway Agency and a contractor for relocation of utilities. It should be noted that Appendix A would not apply when the utility company itself or its contractor relocates utilities.

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

### ***(1) Compliance with Regulations:***

The contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, “DOT”) Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time. (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

### ***(2) Nondiscrimination:***

The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of sub-contractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

### ***(3) Solicitations for Subcontractors, Including Procurements of Materials and Equipment:***

In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor’s obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

### ***(4) Information and Reports:***

The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records,

accounts, other sources of information, and its facilities as may be determined by the *(Recipient)* or the *(Name of Appropriate Administration)* to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the *(Recipient)*, or the *(Name of Appropriate Administration)* as appropriate, and shall set forth what efforts it has made to obtain the information.

***(5) Sanctions for Noncompliance:***

In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the *(Recipient)* shall impose such contract sanctions as it or the *(Name of Appropriate Administration)* may determine to be appropriate, including, but not limited to:

- (a) withholding of payments to the contractor under the contract until the contractor complies, and/or
- (b) cancellation, termination or suspension of the contract, in whole or in part.

***(6) Incorporation of Provisions:***

The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the *(Recipient)* or the *(Name of Appropriate Administration)* may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the *(Recipient)* to enter into such litigation to protect the interests of the *(Recipient)*, and in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## **(7) Conveyances of Land or Property Clauses**

This appendix applies to conveyances of land or property to the States by the Federal government. It conditions the conveyance to require nondiscrimination in connection with the State's use of the property.

- A. The following clauses shall be included in any and all deeds effecting or recording the transfer of real property, structures or improvements thereon, or interest therein from the United States.

### **(GRANTING CLAUSE)**

**NOW, THEREFORE**, the Department of Transportation, as authorized by law, and upon the condition that the **(Name of Recipient)** will accept title to the lands and maintain the project constructed thereon, in accordance with **(Name of Recipient)** will accept title to the lands and maintain the project constructed thereon, in accordance with **(Name of Appropriate Legislative Authority)**, the Regulations for the Administration of **(Name of Appropriate Program)** and the policies and procedures prescribed by **(Name of Appropriate Administration)** of the Department of Transportation and, also in accordance with and in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A. Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter referred to as the Regulations) pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1954 (78 Stat. 252; 42 U.S.C. 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the **(Name of Recipient)** all the right, title and interest of the Department of Transportation in and to said lands described in Exhibit "A" attached hereto and made a part hereof.

### **(HABENDUM CLAUSE)**

**TO HAVE AND TO HOLD** said lands and interests therein unto **(Name of Recipient)** and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on the **(Name of Recipient)**, its successors and assigns.

The **(Name of Recipient)**, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination with regard to any facility located wholly or in part on



## appendix b

over or under such lands hereby conveyed [,] [and]\* (2) that the *(Name of Recipient)* shall use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended [,] and (3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the Department shall have a right to re-enter said lands and facilities on said land, and the above described land and facilities shall thereon revert to and vest in and become the absolute property of the Department of Transportation and its assigns as such interest existed prior to this instruction.\*

\*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

### Deeds, Licenses, Leases, Permits Provisions

The following clauses shall be included in all deeds, licenses, leases, permits, or similar instruments entered into by the **(Name of Recipient)** pursuant to the provisions of Assurance 6(a).

The (grantee, licensee, lessee, permittee, etc., as appropriate) for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Officer of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

[Include in licenses, leases, permits, etc.]•

That in the event of breach of any of the above nondiscrimination covenants. **(Name of Recipient)** shall have the right to terminate the [license, lease, permit, etc.] and to re-enter and repossess said land and the facilities thereon, and hold the same as if said [license, lease, permit, etc.] had never been made or issued.

[Include in deeds]•

That in the event of breach of any of the above nondiscrimination covenants. **(Name of Recipient)** shall have the right to re-enter said land and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of **(Name of Recipient)** and its assigns.

### FHWA 1273

#### **FEDERAL REQUIREMENTS FOR FEDERAL-AID CONSTRUCTION PROJECTS**

The work herein proposed will be financed in whole or in part with Federal funds, and therefore all of the statutes, rules and regulations promulgated by the Federal Government and applicable to work financed in whole or in part with Federal funds will apply to such work. The “Required Contract Provisions, Federal-Aid Construction Contracts, “Form FHWA 1273, are included.

Whenever in said required contract provisions references are made to “SHA contracting officer”, “SHA resident engineer”, or “authorized representative of the SHA”, such references shall be construed to mean “Engineer” as defined in Section 1-1.18 of the California Department of Transportation Standard Specifications.

•Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

# California Department of Transportation

## Title VI Assurances

### I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.
2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.
3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.
4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:  
Section I, paragraph 2;  
Section IV, paragraphs 1, 2, 3, 4, and 7;  
Section V, paragraphs 1 and 2a through 2g.
5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.
6. **Selection of Labor:**  
During the performance of this contract, the contractor shall not:
  - a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or
  - b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

### II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

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### **1. Equal Employment Opportunity:**

Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

- a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.
- b. The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training."

### **2. EEO Officer:**

The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.

### **3. Dissemination of Policy:**

All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

- a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
- b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

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- c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.
- d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
- e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

#### **4. Recruitment:**

When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

- b. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.
- c. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)
- d. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

#### **5. Personnel Actions:**

Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

- a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
- b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

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- c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
- d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

### **6. Training and Promotion:**

- a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
- b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.
- c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
- d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

### **7. Unions:**

If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

- a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
- b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

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- c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.
- d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

### **8. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:**

The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

- a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.
- b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 26, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.
- c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

### **9. Records and Reports:**

The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

- a. The records kept by the contractor shall document the following:
  - (1) The number of minority and non-minority group members and women employed in each work classification on the project;

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- (2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;
  - (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and
  - (4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.
- b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

### III. NON-SEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

- a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.
- b. As used in this certification, the term “segregated facilities” means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).
- c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.



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### IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

#### 1. **General:**

- a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3)] issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c) the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.
- b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.
- c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

#### 2. **Classification:**

- a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

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- b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:
  - (1) The work to be performed by the additional classification requested is not performed by a classification in the wage determination;
  - (2) The additional classification is utilized in the area by the construction industry;
  - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
  - (4) With respect to helpers, when such a classification prevails in the area in which the work is performed.
- c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

### **3. Payment of Fringe Benefits:**

- a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.
- b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe

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benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

#### **4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:**

##### **a. Apprentices:**

- (1) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.
- (2) The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.
- (3) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.
- (4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program,

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the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

### **b. Trainees:**

- (1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.
- (2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.
- (3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.
- (4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

### **c. Helpers:**

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under an approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

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### **5. Apprentices and Trainees (Programs of the U.S. DOT):**

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

### **6. Withholding:**

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

### **7. Overtime Requirements:**

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

### **8. Violation:**

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

### **9. *Withholding for Unpaid Wages and Liquidated Damages:***

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

## **V. STATEMENTS AND PAYROLLS**

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

### **1. *Compliance with Copeland Regulations (29 CFR 3):***

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

### **2. *Payrolls and Payroll Records:***

- a.** Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.
- b.** The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

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- c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.
- d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

  - (1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;
  - (2) that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;
  - (3) that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.
- f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.
- g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.



### VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:
  - a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.
  - b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.
  - c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.
2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

### VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).
  - a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.
  - b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.
2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.



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3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.
4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

### VIII. SAFETY: ACCIDENT PREVENTION

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.
2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).
3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

### IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to

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any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

### **NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS**

#### ***18 U.S.C. 1020 READS AS FOLLOWS:***

“Whoever being an officer, agent, or employee of the United States, or any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined not more that \$10,000 or imprisoned not more than 5 years or both.”

### **X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by P.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by P.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

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2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.
3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.
4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

### **XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

1. Instructions for Certification - Primary Covered Transactions:  
(Applicable to all Federal-aid contracts - 49 CFR 29)
  - a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
  - b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
  - c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
  - d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
  - e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

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- f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.
- i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

### ***Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Primary Covered Transactions***

- 1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
  - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

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- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and
  - d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- 2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

### **2. Instructions for Certification - Lower Tier Covered Transactions:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)

- a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
- b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
- d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification

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is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

- h.** Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i.** Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

### ***Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions***

- 1.** The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- 2.** Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

## **XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING**

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

- 1.** The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

  - a.** No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - b.** If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or

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an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

### FEDERAL-AID FEMALE AND MINORITY GOALS

In accordance with Section II, "Nondiscrimination," of "Required Contract Provisions Federal-aid Construction Contracts" the following are the goals for female utilization:

Goal for Women (applies nationwide).....(percent) 6.9

The following are goals for minority utilization:

### CALIFORNIA ECONOMIC AREA

Goal (Percent)

#### 174 Redding, CA:

Non-SMSA Counties

6.8

CA Lassen; CA Modoc; CA Plumas;  
CA Shasta; CA Siskiyou; CA Tehama.

#### 175 Eureka, CA:

Non-SMSA Counties

6.6

CA Del Norte; CA Humboldt; CA Trinity.

#### 176 San Francisco-Oakland-San Jose, CA:

SMSA Counties:

7120 Salinas-Seaside-Monterey, CA

28.9

CA Monterey.

7360 San Francisco-Oakland

25.6

CA Alameda; CA Contra Costa; CA Marin

CA San Francisco; CA San Mateo.

7400 San Jose, CA

19.6

CA Santa Clara.

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7485 Santa Cruz, CA. 14.9  
CA Santa Cruz.

7500 Santa Rosa, CA 9.1  
CA Sonoma.

8720 Vallejo-Fairfield-Napa, CA 17.1  
CA Napa; CA Solano

Non-SMSA Counties 23.2  
CA Lake; CA Mendocino; CA San Benito.

### 177 Sacramento, CA:

SMSA Counties:  
6920 Sacramento, CA. 16.1  
CA Placer; CA Sacramento; CA Yolo.

Non-SMSA Counties. 14.3  
CA Butte; CA Colusa; CA El Dorado; CA Glenn;  
CA Nevada; CA Sierra; CA Sutter; CA Yuba.

### 178 Stockton-Modesto, CA:

SMSA Counties:  
5170 Modesto, CA 12.3  
CA Stanislaus.

8120 Stockton, CA 24.3  
CA San Joaquin.

Non-SMSA Counties 19.8  
CA Alpine; CA Amador; CA Calaveras;  
CA Mariposa; CA Merced; CA Tuolumne.

### 179 Fresno-Bakersfield, CA:

SMSA Counties:  
0680 Bakersfield, CA 19.1  
CA Kern.

2840 Fresno, CA 26.1  
CA Fresno.

Non-SMSA Counties 23.6  
CA Kings; CA Madera; CA Tulare.

### 180 Los Angeles, CA:

SMSA Counties:  
0360 Anaheim-Santa Ana-Garden 11.9  
Grove, CA.;  
CA Orange.



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4480 Los Angeles-Long Beach, CA 28.3  
CA Los Angeles.

6000 Oxnard-Simi Valley-Ventura, CA 21.5  
CA Ventura.

6780 Riverside-San Bernardino-Ontario, CA.  
CA Riverside; CA San Bernardino. 19.0

7480 Santa Barbara-Santa Maria-Lompoc, CA 19.7  
CA Santa Barbara.

Non-SMSA Counties  
CA Inyo; CA Mono; 24.6  
CA San Luis Obispo.

### 181 San Diego, CA:

SMSA Counties  
7320 San Diego, CA. 16.9  
CA San Diego.

Non-SMSA Counties 18.2  
CA Imperial.

In addition to the reporting requirements set forth elsewhere in this contract the Contractor and subcontractors holding subcontracts, not including material suppliers, of \$10,000 or more, shall submit for every month of July during which work is performed, employment data as contained under Form FHWA PR-1391 (Appendix C to 23 CFR, Part 230), and in accordance with the instructions included thereon.



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### ASSURANCES 49 CFR PART 21.7

The ( NAME OF THE RECIPIENT ), **HEREBY GIVES ASSURANCES:**

1. That no person shall on the grounds of race, color, national origin, sex, age, and disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity conducted by the recipient regardless of whether those programs and activities are federally funded or not. Activities and programs which the recipient hereby agrees to carry out in compliance with Title VI and related Acts include but are not limited to:
  1. (LIST ALL MAJOR PROGRAMS AND ACTIVITIES OF THE RECIPIENT)
2. That it will promptly take any measures necessary to effectuate this agreement.
3. That each “program,” “activity,” and “facility” as defined at 49 CFR 21.23(b) and (e), and the Civil Rights Restoration Act of 1987 will be (with regard to a “program” or “activity”) conducted, or will be (with regard to a “facility”) operated in compliance with the nondiscriminatory requirements imposed by, or pursuant to, this agreement.
4. That these assurances are given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the recipient by Division of Local Assistance is binding on it, other recipients, subgrantees, contractors, sub-contractors, transferee, successors in interest and other participants in the Local Assistance Program. The person or persons whose signatures appear below are authorized to sign these assurances on behalf of the Recipient.
5. That the Recipient shall insert the following notification in all solicitations for bids for work or material subject to the Regulations and made in connection with all local assistance programs and, in adapted form in all proposals for negotiated agreements:  
 The (Recipient), in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 26 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex, age, disability in consideration for an award.
6. That the Recipient shall insert the clauses of Appendix A of this agreement in every contract subject to the Act and the Regulations.
7. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Act, the Regulations, and this agreement.

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### 23 CFR PART 200 IMPLEMENTATION PROCEDURES

This agreement shall serve as the recipient's Title VI plan pursuant to 23 CFR 200.

For the purpose of this agreement, "Federal Assistance" shall include:

- (1) grants and loans of Federal funds,
- (2) the grant or donation of Federal property and interests in property,
- (3) the detail of Federal personnel,
- (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and
- (5) any Federal agreement, arrangement, or other contract which has, as one of its purposes, the provision of assistance.

The recipient shall:

- (1) Issue a policy statement, signed by the head of the recipient, which expresses its commitment to the nondiscrimination provisions of Title VI. The policy statement shall be circulated throughout the recipient's organization and to the general public. Such information shall be published where appropriate in languages other than English.
- (2) Take affirmative action to correct any deficiencies found by the California Department of Transportation, Division of Local Assistance and/or Civil Rights Title VI Program within a reasonable time period, not to exceed 90 days, in order to implement Title VI compliance in accordance with this agreement. The head of the recipient shall be held responsible for implementing Title VI requirements.
- (3) Establish a civil rights unit and designate a coordinator who has a responsible position in the organization and easy access to the head of the recipient. This unit shall contain a Title VI Equal Employment Opportunity Coordinator or a Title VI Specialist, who shall be responsible for initiating and monitoring Title VI activities and preparing required reports.
- (4) Adequately staff the civil rights unit to effectively implement the civil rights requirements.
- (5) Process complaints of discrimination consistent with the provisions contained in this agreement. Investigations shall be conducted by civil rights personnel trained in discrimination complaint investigations. Identify each complainant by race, color, national origin, sex, age, disability; the nature of the complaint; the dates the complaint was filed and the investigation completed; the disposition; the date of the disposition;

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## Title VI Assurances

and other pertinent information. A copy of the complaint, together with a copy of the recipient's report of investigation, will be forwarded to the California Department of Transportation, Civil Rights, Discrimination Complaint Investigation Unit within 60 days of the date the complaint was received by the recipient.

- (6) Collect statistical data (race, color, national origin, sex, age, disability) of participants in, and beneficiaries of the programs and activities conducted by the recipient.
- (7) Conduct Title VI reviews of the recipient's and subrecipient's, contractor's, program areas and activities. Revise where applicable policies, procedures and directives to include Title VI requirements.
- (8) Conduct training programs on Title VI and related statutes.
- (9) Prepare a yearly report of Title VI accomplishments for the past year and goals for the next year.

### (a) Accomplishment Report

List major accomplishments made regarding Title VI activities. Include instances where Title VI issues were identified and discrimination was prevented. Indicate activities and efforts the Title VI Specialist and program area personnel have undertaken in monitoring Title VI. Include a description of the scope and conclusions of any special reviews conducted by the Title VI Specialist. List any major problem(s) identified and corrective action taken. Include a summary and status report on any Title VI complaints filed with the recipient.

### (b) Annual Work Plan

Outline Title VI monitoring and review activities planned for the coming year; state by whom each activity will be accomplished and target date for completion.

## DISCRIMINATION COMPLAINT PROCEDURE

1. Any person who believes that he or she, individually, as a member of any specific class, or in connection with any disadvantaged business enterprise, has been subjected to discrimination prohibited by Title VI of the Civil Rights Act of 1964, as amended, may file a complaint with the recipient. A complaint may also be filed by a representative on behalf of such a person. All complaints will be referred to the recipient's Title VI Specialist for review and action.
2. In order to have the complaint considered under this procedure, the complainant must file the complaint no later than 180 days after:
  - (a) The date of an alleged act of discrimination; or
  - (b) Where there has been a continuing course of conduct, the date on which that conduct was discontinued.

In either case, the recipient or his/her designee may extend the time for filing or waive the time limit in the interest of justice, specifying in writing the reason for so doing.

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## Title VI Assurances

3. Complaints shall be in writing and shall be signed by the complainant and/or the complainant's representative. Complaints shall set forth as fully as possible the facts and circumstances surrounding the claimed discrimination. In the event that a person makes a verbal complaint of discrimination to an officer or employee of the recipient, the person shall be interviewed by the Title VI Specialist. If necessary, the Title VI Specialist will assist the person in reducing the complaint to writing and submit the written version of the complaint to the person for signature. The complaint shall then be handled in the usual manner.
4. Within 10 days, the Title VI Specialist will acknowledge receipt of the allegation, inform the complainant of action taken or proposed action to process the allegation, and advise the complainant of other avenues of redress available, such as Division of Local Assistance and the Department of Transportation.
5. The recipient will advise the Department of Transportation, Civil Rights, Discrimination Complaint Investigation Unit within 10 days of receipt of the allegations. Generally, the following information will be included in every notification to the DCIU:
  - (a) Name, address, and phone number of the complainant.
  - (b) Name(s) and address(es) of alleged discriminating official(s).
  - (c) Basis of complaint (i.e., race, color, national origin, sex, age, disability/ handicap).
  - (d) Date of alleged discriminatory act(s).
  - (e) Date complaint was received by the recipient.
  - (f) A statement of the complaint.
  - (g) Other agencies (state, local or Federal) where the complaint has been filed.
  - (h) An explanation of the actions the recipient has taken or proposed to resolve the issue raised in the complaint.
6. Within 60 days, the Title VI Specialist will conduct and complete an investigation of the allegation and based on the information obtained, will render a recommendation for action in a report of findings to the head of the recipient. The complaint should be resolved by informal means whenever possible. Such informal attempts and their results will be summarized in the report of findings.
7. Within 90 days of the allegation's receipt, the head of the recipient will notify the complainant in writing of the final decision reached, including the proposed disposition of the matter. This notification will advise the complainant of the following possible avenues of appeal if dissatisfied with the decision; U.S. Department of Transportation or Division of Local Assistance, Office of Civil Rights. The Title VI Specialist will also provide the Department of Transportation, Civil Rights, Discrimination Complaint Investigation Unit with a copy of this decision and summary of findings.

# California Department of Transportation

## Title VI Assurances

### SANCTIONS

In the event the recipient fails or refuses to comply with the terms of this agreement, Division of Local Assistance may take any or all of the following sanctions:

- (a) Cancel, terminate, or suspend this agreement in whole or in part;
- (b) Refrain from extending any further assistance to the recipient under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the recipient;
- (c) Take such other action that may be deemed appropriate under the circumstances, until compliance or remedial action has been accomplished by the recipient.
- (d) Refer the case to the Department of Justice for appropriate legal proceedings.

**SIGNED FOR** Division of Local Assistance:

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(NAME)  
Director

Date

**SIGNED FOR THE** (NAME OF THE RECIPIENT):

---

(AUTHORIZED SIGNATURE)

Date

### APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

**(1) *Compliance with Regulations:***

The contractor shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, “DOT”) Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

**(2) *Nondiscrimination:***

The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

**(3) *Solicitations for Subcontracts, Including Procurements of Materials and Equipment:***

In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor’s obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

**(4) *Information and Reports:***

The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the (Recipient) or the (Name of Appropriate Administration) to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the (Recipient), or the (Name of Appropriate Administration) as appropriate, and shall set forth what efforts it has made to obtain the information.



# California Department of Transportation

## Title VI Assurances

### **(5) Sanctions for Noncompliance:**

In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the **(Recipient)** shall impose such contract sanctions as it or the **(Name of Appropriate Administration)** may determine to be appropriate, including, but not limited to:

- (a) withholding of payments to the contractor under the contract until the contractor complies, and/or
- (b) cancellation, termination or suspension of the contract, in whole or in part.

### **(6) Incorporation of Provisions:**

The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the **(Recipient)** or the **(Name of Appropriate Administration)** may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the **(Recipient)** to enter into such litigation to protect the interests of the **(Recipient)**, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## I. INTRODUCTION

The Title VI and Related Statutes discrimination complaint procedures are intended to provide aggrieved persons an avenue to raise complaints of discrimination regarding the Department of Transportation's (Department) programs, activities and services as required by statute.

## II. PURPOSE

The purpose of the discrimination complaint procedures is to describe the process used by the Office of Equal Opportunity, (OEO) Discrimination Complaint Investigation Unit (DCIU), for processing complaints of discrimination under Title VI of the Civil Rights Act of 1964 and related statutes.

## III. ROLES AND RESPONSIBILITIES

- The Chief of the OEO has overall responsibility for the discrimination complaint process and procedures. The Chief provides direction to District Equal Opportunity (EO) Officers, Headquarters EO staff, and the DCIU on the discrimination complaint process.
- The District EO Officers, District Title VI Liaisons and Headquarters EO staff serve as points of contact statewide for the public to initiate complaints of discrimination.
- The DCIU is responsible for conducting an impartial and objective investigation, collect factual information and prepare a fact-finding report based upon the information obtained from the investigation.

## IV. FILING OF FORMAL COMPLAINTS

### ***A. Applicability***

The complaint procedures apply to the beneficiaries of the Department of Transportation's programs, activities, and services, including but not limited to the public, contractors, subcontractors, consultants and other subrecipients of Federal and State funds.

### ***B. Eligibility***

Any person who believes that he/she has been excluded from participation in, denied benefits or services of any program or activity administered by the Department or its subrecipients, consultants, and contractors on the basis of race, color, national origin, sex, age, or disability may bring forth a complaint of discrimination under Title VI and related statutes.

### ***C. Time Limitation and Filing Options***

Title VI complaints of discrimination may be filed with:

- The Department District EO Offices, Headquarters OEO, or DCIU
- Federal Highway Administration

# complaint handling

- U.S. Department of Transportation

In all situations, Civil Rights staff and/or District Offices must immediately forward Title VI discrimination complaints to the OEO DCIU.

Complaints must be filed no later than 180 days after:

- The date of the alleged act of discrimination; or
- The date when the person(s) became aware of the alleged discrimination; or
- Where there has been a continuing course of conduct, the date on which the conduct was discontinued.

## **D. Type of Complaints**

All Title VI and related statute complaints are considered formal as there is no informal process. Complaints must be in writing and signed by the complainant. Complaints must include the complainant's name, address and phone number and be detailed to specify all issues and circumstances of the alleged discrimination.

## **E. Complaint Basis**

Allegations must be based on issues involving race, color, national origin, sex, age or disability. The term basis refers to the complainant's protected group status.

PROTECTED GROUP CATEGORIES	DEFINITION	EXAMPLES
<b>Race</b>	An individual belonging to one of the accepted anthropological racial groups; or the perception, based usually on physical characteristics that a person is a member of a racial group.	Black, White, Hispanic, Asian, Native American Indian, Filipino, or Pacific Islander.
<b>Color</b>	Color of skin, including shade of skin within a racial group.	Black, white, light brown, dark brown, etc.
<b>National Origin</b>	National birth site. Citizenship is not a factor. Discrimination based on language or a person's accent is covered by national origin.	Mexican, Cuban, Japanese, Vietnamese, Chinese.
<b>Sex</b>	Gender.	Women and men.
<b>Age</b>	Persons of any age.	21 year old person.
<b>Disability</b>	Physical or mental impairment, permanent or temporary, or perceived.	Blind, alcoholic, para-amputee, epileptic, diabetic, arthritic.

## **V. INTERNAL COMPLAINT PROCESSING**

### **A. Initial Contact**

District EO Officers, District Title VI Liaisons, and Headquarters EO staff serve as the Department's EO resources for members of the public who wish to file a discrimination complaint under Title VI and related statutes. As resources, the District EO Officers and Headquarters EO staff provide complainants with:

- An explanation of their filing options.
- The discrimination complaint process.
- A Title VI and Related Statutes Discrimination Complaint Form.
- The brochure, titled “Caltrans and You, Your Rights Under Title VI and Related Statutes.”

## **B. The Complaint Review Process**

1. The DCIU reviews the complaint upon receipt to ensure that relevant information is provided, the complaint is timely, and meets jurisdiction.
2. The complaint shall be investigated unless:
  - The complaint is withdrawn.
  - The complainant fails to provide required information after numerous requests.
  - The complaint is not filed timely.
  - Any issues that do not involve discrimination, or are not based on a protected basis will be directed to the appropriate entity. Under no circumstance is the complainant discouraged from filing a complaint.
3. Upon determination that the complaint warrants an investigation: The complainant is sent a letter, acknowledging receipt of the complaint, the name of the investigator, and is provided with his/her rights under Title VI and related statutes.
4. The respondent is notified by mail that he/she has been named in a complaint and is provided with his/her rights under Title VI and related statutes. The letter also reveals the investigator’s name and informs the respondent that he/she will be contacted for an interview.
5. A letter is sent to the District Director when the complainant(s) or respondent(s) are located in a district office. If the parties are located in Headquarters, the program manager will be informed that a complaint was filed, the letter will list the names of the parties involved, the basis of the complaint and the assigned investigator.

## **VI. INVESTIGATION**

### **A. Investigation Plan**

The investigator shall prepare a written plan, which includes, but is not limited to the following:

- Names of the complainant(s) and respondent(s);
- Basis for the complaint;
- Issues, events or circumstances that caused the person to believe that he/she has been discriminated against;
- Information needed to address the issue;
- Criteria, sources necessary to obtain the information;

# complaint handling

- Identification of key people;
- Estimated investigation time line;
- Remedy sought by the complainant(s).

## **B. Conducting the Investigation**

- The investigation will address only those issues relevant to the allegations in the complaint.
- Confidentiality will be maintained as much as possible.
- Interviews will be conducted to obtain facts and evidence regarding the allegations in the complaint. The investigator will ask questions to elicit information about aspects of the case, which the witness can provide firsthand information.
- Interviews are tape recorded with the interviewee's consent.
- A chronological contact sheet is maintained in the case file throughout the investigation.
- The investigation working papers are completed, cross-referenced and indexed.
- The interviewee may have representation of his/her choice at the interview.

## **C. Investigation Reporting Process**

- Within 16 to 20 days of receiving the complaint, the investigator prepares an investigative report and submits the report and supporting documentation to the Chief OEO for review.
- The Chief, OEO reviews the file and investigative report. Subsequent to the review, the Chief, OEO, makes a final determination of "probable cause" or "no cause" and prepares the final decision letter for signature by the Deputy Director, Civil Rights Program.
- The DCIU shall prepare and submit a written report to the Title VI Coordinator, outlining the following complaint details: Date of written complaint; contract number; contractor and/or subcontractor name; and, complaint basis (race, color, national origin, etc.)

## **VII. REPORTING REQUIREMENTS TO AN EXTERNAL AGENCY**

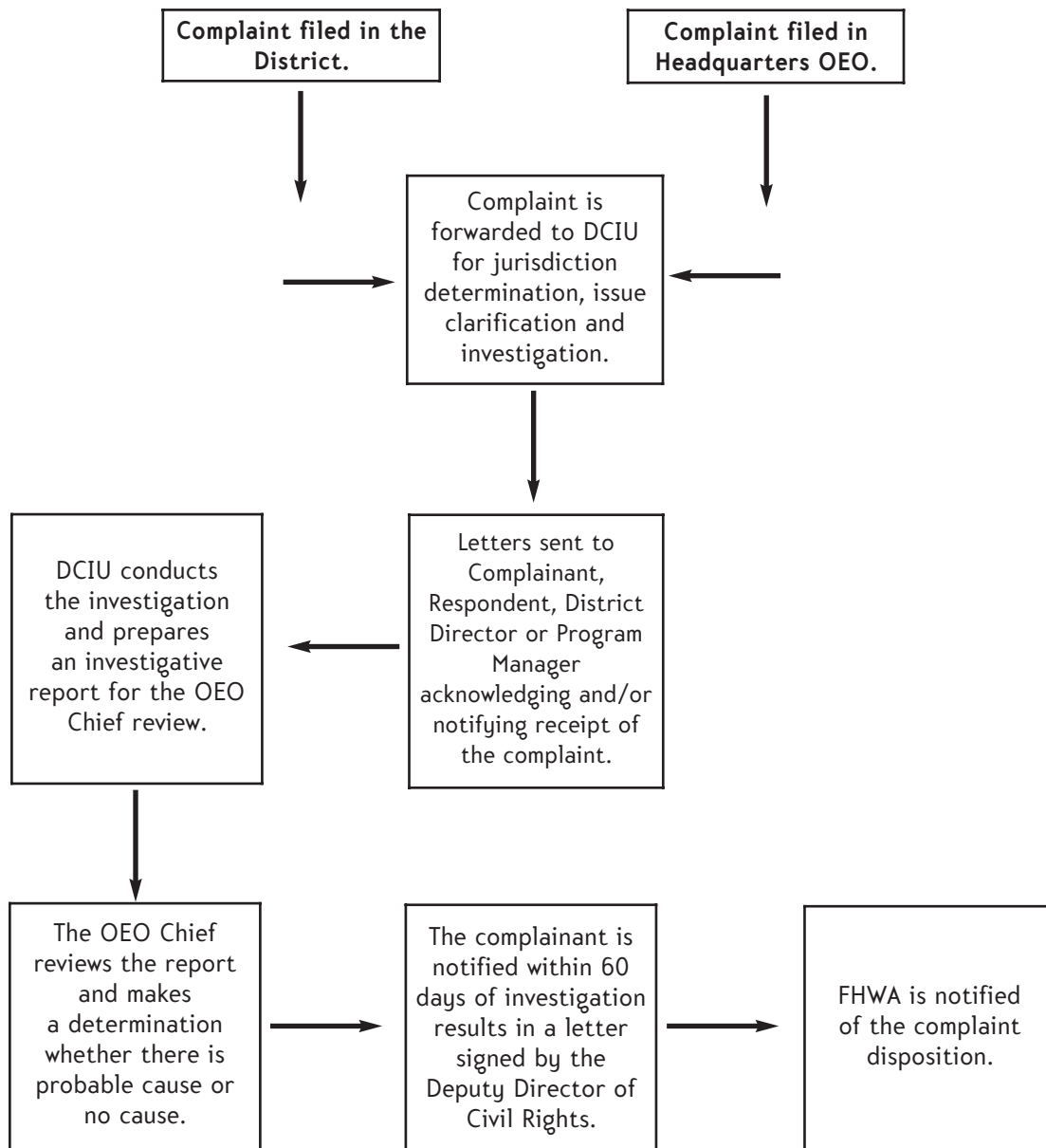
The DCIU will forward a copy of the complaint, together with a copy of the report of investigation, to the Federal Highway Administration within 60 days of the date the complaint was received.

## **VIII. RECORDS**

All records and investigative working files are maintained in a confidential area within the DCIU. Records are kept for three years internally then archived for a period of ten years at the State Records Center.

# complaint handling

## IX. TITLE VI AND RELATED STATUTES COMPLAINT PROCESS FLOWCHART



## X. AUTHORITIES

### ***TITLE VI OF THE CIVIL RIGHTS ACT OF 1964***

*Title VI of the 1964 Civil Rights Act*, 42 U.S.C. 2000, provides in section 601 that:

“(N)o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

# complaint handling

(Proscribes discrimination in impacts, services, and benefits of, access to, participation in, and treatment under federal-aid recipients' programs or activities)

## **SECTION 324 FEDERAL-AID HIGHWAY ACT**

**23 U.S.C. 324**, provides that: "(N)o person shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal assistance under this title or carried on under this title." (Prohibits discrimination on the basis of sex)

## **SECTION 504 OF THE REHABILITATION ACT OF 1973**

**Section 504 of the Rehabilitation Act of 1973**, 29 U.S.C. 790, provides that: "(N)o qualified handicapped person shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity that receives or benefits from Federal financial assistance." (Prohibits discrimination based on physical or mental handicap)

## **AGE DISCRIMINATION ACT OF 1975**

**The Age Discrimination Act of 1975**, 42 U.S.C. 6101, provides that: "(N)o person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." (Prohibits discrimination based on age)

## **CIVIL RIGHTS RESTORATION ACT OF 1987**

**The Civil Rights Restoration Act of 1987**, P.L. 100-209, provides clarification of the original intent of Congress in Title VI of the 1964 Civil Rights Act, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973. (Restores the broad, institution-wide scope and coverage of the non-discrimination statutes to include **all** programs and activities of federal-aid recipients, sub-recipients and contractors, whether such programs and activities are federally assisted or not.)

## **EXECUTIVE ORDER 12898**

**E.O. 12898** — Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (as amended).

## **EXECUTIVE ORDER 13166, LIMITED ENGLISH PROFICIENCY**

This Executive Order directs Federal agencies, recipients and sub-recipients of Federal financial assistance to examine services they provide, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide services so LEP persons have meaningful access to them. In addition, Federal agencies must develop and implement a plan to improve the language-accessibility of their programs by December 11, 2000.

## ANNUAL ACCOMPLISHMENT REPORT FORMAT

*In accordance with CFR 23 §200.9 (b) (10) & (11), an annual report of Title VI accomplishments for the past year and goals for the next year is submitted to the Federal Highway Administration by October 1. This report update should contain the necessary information to evaluate a State's Title VI Program as it pertains to accomplishments, shortfalls and problem areas.*

### **Accomplishment Report for Each Program Area** [23 CFR, §200.9 (b) (10)]

At the minimum, the following should be included in an annual Title VI update for each of the various program areas:

#### **A. Planning**

1. What activities and/or studies were conducted that provided data relative to minority persons, neighborhoods, income levels, physical environment and travel habits? Please list each activity or study and include a very brief statement about the activity or study and how it was/will be used.
2. Identify the number of public meetings and hearings held during the reporting period. What efforts did you use to ensure citizen participation in the public meetings and hearings, particularly minorities, women, elderly, disabled and low-income? Were minorities, women, elderly, disabled and low-income citizens, both individually and through their organizations, represented in the citizen participation effort? How many and in what capacity?
3. Describe the mechanisms you used to identify what communities (minorities, women, elderly, disabled and low-income) were represented at these public meetings and hearings.
4. Provide a summary of Title VI self-monitoring activities conducted, including findings, recommendations, action items and status thereof.
5. What Title VI training was provided by your program?
6. What Title VI training was attended by program personnel?
7. List any significant problem areas and corrective actions taken.
8. List major accomplishments made regarding Title VI since the last plan update. Include instances where Title VI issues were identified and discrimination was prevented.
9. List goals/actions planned for the ensuing year.

#### **B. Environmental Services**

1. During the reporting period, how many pre-draft Environmental Impact Statements (EIS) were reviewed? Summarize comments provided on EISs where minorities, women, elderly, disabled and low-income persons were adversely impacted.



# annual report format

2. How many public hearings were held during the reporting period concerning location of a project? How were the hearings advertised, and was it adequate to provide notification to minorities and low-income communities?
3. How were minorities, women, elderly, disabled and low-income community representatives identified and encouraged to become involved in the location and environmental phase?
4. During the reporting period, was there a need to utilize bilingual or non-English advertisements, announcements, notices, etc.?
5. Provide a summary of Title VI self-monitoring activities conducted, including findings, recommendations, action items and status thereof.
6. What Title VI training was provided by your program?
7. What Title VI training was attended by your program personnel?
8. List any significant problem areas and corrective actions taken.
9. List major accomplishments made regarding Title VI since the last plan update. Include instances where Title VI issues were identified and discrimination was prevented.
10. List goals/actions planned for the ensuing year.

## **C. Right of Way**

1. How many negotiations were made during the reporting period? Does the negotiator's log reflect any disparity in the conduct of negotiations between minorities and non-minorities?
2. Did minorities, women, elderly raise any concerns, disabled or low-income citizens concerning their options in the negotiation phase? Please specify how many were minorities, women, elderly, disabled and low-income.
3. Describe the mechanisms you used to identify what communities (minorities, women, elderly, disabled and low-income) were represented in the negotiation phase.
4. Specify the number of relocations during the reporting period: \_\_\_\_\_
5. Were any concerns raised by minorities, women, elderly, disabled and low-income on replacement housing, referral housing, appraisals, relocation assistance, payments and property management?
6. Provide a summary of Title VI self-monitoring activities conducted, including findings, recommendations, action items and status thereof.
7. List any significant problem areas and corrective actions taken.
8. List major accomplishments made regarding Title VI since the last plan update. Include instances where Title VI issues were identified and discrimination was prevented.
9. List goals/actions planned for the ensuing year.

## **D. Project Initiation and Selection**

1. How are Title VI considerations addressed through stakeholder involvement mechanisms?
2. Describe how minorities, women, elderly, disabled and low-income populations were provided opportunities to be involved in project selection processes.
3. Describe the mechanisms you used to identify what populations (minorities, women, elderly, disabled and low-income) were represented in the project selection processes.
4. Describe what project selection decisions if any, were affected by Title VI or Environmental Justice issues?
5. Provide a summary of Title VI self-monitoring activities conducted, including findings, recommendations, action items and status thereof.
6. What Title VI training was provided by your program?
7. What Title VI training was attended by your program personnel?
8. List any significant problem areas and corrective actions taken.
9. List major accomplishments made regarding Title VI since the last plan update. Include instances where Title VI issues were identified and discrimination was prevented.
10. List goals/actions planned for the ensuing year.

## **E. Construction**

1. How many projects were initiated in this reporting period?
2. Of these projects, how many had mitigation measures?
3. Identify how many mitigation measures had Title VI implications.
4. For each mitigation measure having Title VI implications, briefly describe what was mitigated.
5. How many contract change orders had Title VI implications during this reporting period? Briefly describe how the implications were resolved.
6. How many public meetings were held to keep communities informed of projects? Were minorities, women, elderly, disabled and low-income populations represented at these meetings?
7. Describe the mechanisms you used to identify what communities (minorities, women, elderly, disabled and low-income) were represented at these meetings.
8. Describe the efforts made to invite minorities, women, elderly, disabled and low-income communities to the meetings.
9. Provide a summary of Title VI self-monitoring activities conducted, including findings, recommendations, action items and status thereof.
10. What Title VI training was provided by your program?
11. What Title VI training was attended by your program personnel?

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12. List any significant problem areas and corrective actions taken.
13. List major accomplishments made regarding Title VI since the last plan update. Include instances where Title VI issues were identified and discrimination was prevented.
14. List goals/actions planned for the ensuing year.

## **F. Research**

1. How many research projects are currently underway?
2. Summarize actions taken to encourage universities to use minority, female, disabled and low-income students to participate on highway research projects.
3. Provide a summary of Title VI self-monitoring activities conducted, including findings, recommendations, action items and status thereof.
4. What Title VI training was provided by your program?
5. What Title VI training was attended by your program personnel?
6. List any significant problem areas and corrective actions taken.
7. List major accomplishments made regarding Title VI since the last plan update. Include instances where Title VI issues were identified and discrimination was prevented.
8. List goals/actions planned for the ensuing year.

## **Equal Opportunity**

At a minimum, address the following questions in your response.

1. Provide a summary of Title VI self-monitoring activities conducted, including findings, recommendations, action items and status thereof.
2. List goals/actions planned for the ensuing year.

## **Staffing Composition**

Please provide the titles, ethnicity and gender of employees, by program, working within the Department of Transportation. Were there any vacancies during the reporting period? What efforts were made to increase the representation of minorities, women and the disabled if they are under represented?

## **Training**

1. What Title VI training was provided by your program?
2. What Title VI training was attended by your program personnel?
3. Were any civil rights complaints filed concerning training and educational opportunities? If so, what corrective actions were taken? Provide a summary of concerns raised, complaints filed, status, etc.

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## **Complaints**

### **A. Planning**

Were any civil rights complaints received as a result of the California Department of Transportation's (Department) planning process; e.g., public involvement activities, lack of coordination with Indian tribal governments, contracting opportunities for planning studies or corridor studies? If so, how many? Summarize each complaint and the status, with actions proposed and taken.

### **B. Environmental**

Any complaints received as a result of the Department's choice of highway location or the procedure used for arriving at the choice? If so, how many? Summarize each complaint and the status, with actions proposed and taken.

### **C. Right of Way**

Did your program receive any civil rights complaints in the following Right of Way functional areas:

1. Appraisals
2. Negotiation
3. Relocation Assistance and Payments
4. Property Management

If so, how many? Summarize each complaint and the status, with actions proposed and taken.

### **D. Construction**

Has your program received any civil rights complaints involving competitive bidding procedures? If so, was any corrective action needed, what corrective action did the Department take? (Provide summary of any concerns raised by Disadvantaged Business Enterprise firms concerning licensing, lack of subcontracting opportunities, etc.)

### **E. Research**

Were any civil rights complaints received regarding non-utilization of minority universities for research studies? If so, how many? Summarize each complaint and the status, with actions proposed and taken.

## DATA COLLECTION

As stated in the body of the guidelines, a condition of the Department's Nondiscrimination Agreement with the Federal Highway Administration Regional Administrator, Implementation Procedures, Item 6, states: "Collect statistical data (race, color, national origin, sex, age, and disability) of participation in and beneficiaries of the program and activities conducted by the Recipient."

Specific to Title VI, the White House, Office Management and Budget issued OMB Bulletin No. 00-02, March 9, 2000. The subject is Guidance on Aggregation and Allocation of Data on Race for Use in Civil Rights Monitoring and Enforcement. This bulletin establishes guidance for agencies that collect or use aggregate data on race. It also establishes for the allocation of multiple race response for use in civil rights monitoring and enforcement.

The bulletin refers to the "Provisional Guidance on the Implementation of the 1997 Standards for the Collection of Federal Data on Race and Ethnicity" document.

For a complete copy of the guidance document visit the website at:

<http://www.whitehouse.gov/omb/bullentins/b00-02.html>

The Provisional Guidance on the Implementation of the 1997 Standards for the Collection of Federal Data on Race and Ethnicity, Chapter 4, Using Data on Race and Ethnicity collected Under the 1997 Standards, A. Civil Rights enforcement and Monitoring, 4. Enforcement of Title VI of the Civil Rights Act of 1964 states: "All agencies that enforce regulations under Title VI of the Civil Rights Act of 1964, as amended, are obligated to follow the guidance provided in this document and OMB Bulletin No. 00-02, which addresses aggregating and allocating data on race for civil rights enforcement and monitoring. The Title VI Coordination Regulations at 28 C.F. R. § 42.406, provide that all agencies "shall in regard to each assisted program provide for the collection of data and information from applicants for and recipients of Federal assistance sufficient to permit effective enforcement of [T]itle IV."

All agency Title VI regulations provide for the collection of such data. Agencies currently follow the categories set forth in the Title VI Coordination Regulations, which "are in conformity with the OMB Ad Hoc Committee on Race/Ethnic Categories' recommendations."

**See** 28 C.F.R. § 42.302(e). The section states, however, that to the extent that these designations are modified by OMB, the regulation is to be interpreted to be consistent with any such OMB modifications. **See** 28 C.F.R. § 42.402(e)(5). Accordingly, the categories listed in the regulation are no longer in effect.

The 1997 revised standards, effective October 30, 1997, require all Federal agencies with Title VI compliance and enforcement obligations to provide for the collection of data by offering respondents the option of selecting one or more of the following racial categories:

# data collection

1. American Indian or Alaska Native
2. Asian
3. Black or African American
4. Native Hawaiian or other Pacific Islander
5. White

Pursuant to OMB Bulletin No. 00-02, agencies are instructed to tabulate data on race using the five single race categories outlined above *plus* the following four multiple race combinations most likely to occur:

1. American Indian or Alaska Native *and* White
2. Asian *and* White
3. Black or African American *and* White
4. American Indian or Alaska Native *and* Black or African American

Agencies are also advised to tabulate additional multiple race combinations that are greater than one percent of the population at issue and include these combinations as part of any tabulation.

Thus, all agency tabulations for data on race should reflect a minimum of ten categories: the five single race categories, the four multiple race categories, and a balance category. In surveys where there are additional multiple race combinations that are greater than one percent of the population at issue, those categories should be included in any final tabulation.

All agencies with Title VI enforcement responsibilities should also be aware that OMB Bulletin No. 00-02 provides guidance for the allocation of multiple race responses for use in civil rights monitoring and enforcement. Pursuant to that guidance, the following rules apply:

- Responses in the five single race categories will not be allocated.
- Responses that combine one minority race and white are allocated to the minority race.
- Responses that include two or more minority races are allocated as follows:
  - If the enforcement action is in response to a complaint, a multiple race response will be allocated to the race that the complainant alleges the discrimination was based on.
  - If the enforcement action requires assessing disparate impact or discriminatory patterns, analyze the patterns based on alternative allocations to each of the minority groups.

Under the 1997 standards, “Hispanic or Latino” is an ethnic category, not a racial category. Where agencies collect data on race and ethnicity separately, ethnicity must be collected first. In such cases, provisions shall be made to report the number of respondents in each racial category who are “Hispanic or Latino” and who are “Not Hispanic or Latino.”

All agencies must modify all new and revised record keeping or reporting forms that include racial and/or ethnic information to conform to the 1997 standards. All existing record keeping or reporting requirements must be consistent with these standards at the time they are submitted for extension, but not later than January 1, 2003. Agencies should note that OMB is the final arbiter of all modifications to racial and ethnic categories used in Federal data collection instruments.

Executive Order No. 12250 gives the Attorney General authority to ensure the consistent and effective enforcement of Title VI and other nondiscrimination statutes that apply to recipients of Federal financial assistance. That authority has been delegated to the Civil Rights Division in the Department of Justice. The Division, through the Coordination and Review Section, will ensure that all agencies are aware of the 1997 standards and are taking appropriate steps to implement the OMB guidance. The Division’s Coordination and Review Section will be available to Federal agencies to assist them in this endeavor.”

All programs are strongly encouraged to obtain a complete copy of the Provisional Guidance on the Implementation of the 1997 Standards for the Collection of Federal Data on race and Ethnicity document.

[http://www.whitehouse.gov/omb/info/reg/r&e\\_guidance2000update.pdf](http://www.whitehouse.gov/omb/info/reg/r&e_guidance2000update.pdf)

The Department’s, Statewide Planning Program, has implemented the use of a data collection card during the California Transportation Plan public participation workshops statewide. The card has been translated to Spanish at a 5th grade literacy level. The card and a writing utensil is provided at the beginning of each workshop and is included on the agenda ensuring time to bring attention to the card, time to complete the card, and time to gather the card from participants before the next agenda item is addressed. A copy of the card in English and Spanish also follows.

This section will be updated as information on data collection is received.

## California Transportation Plan Workshop

Location: \_\_\_\_\_

Date: \_\_\_\_\_

Your home ZIP code

### Voluntary Information

Please provide the following information about you. Please check the correct boxes.

#### Sex

- ☐ Female  
☐ Male

#### Age

- ☐ 1–21      ☐ 41–65  
☐ 22–40      ☐ Over 65

#### Disability

- ☐ Yes  
☐ No

#### Ethnicity

- ☐ White (non-Hispanic)  
☐ Asian  
☐ American Indian  
☐ Native Hawaiian/other  
Pacific Islander  
☐ Black  
☐ Hispanic  
☐ Other: \_\_\_\_\_

#### First Language

- ☐ English  
☐ Spanish  
☐ Vietnamese  
☐ Chinese dialect  
☐ Russian  
☐ Other: \_\_\_\_\_

#### Second Language

- ☐ English  
☐ Spanish  
☐ Vietnamese  
☐ Chinese dialect  
☐ Russian  
☐ Other: \_\_\_\_\_

#### Income

- ☐ \$0 – \$12,000  
☐ \$12,000 – \$24,000  
☐ \$25,000 – \$36,000  
☐ \$37,000 – \$48,000  
☐ \$49,000 – \$60,000  
☐ Over \$61,000

## California Transportation Plan Workshop

Location: \_\_\_\_\_

Date: \_\_\_\_\_

### Voluntary Information

Who are you representing?

#### (1) Minority population/organization

- ☐ Asian  
☐ American Indian  
☐ Native Hawaiian/other Pacific Islander  
☐ Black  
☐ Hispanic  
☐ Other: \_\_\_\_\_

#### (2) Low-income population

- ☐ Yes  
☐ No

#### (3) Persons with disabilities

- ☐ Yes  
☐ No

#### (4) Elder population

- ☐ Yes  
☐ No





## Plan de Transporte para California Talleres Regionales

Lugar: \_\_\_\_\_ Fecha: \_\_\_\_\_

El código postal de su residencia

### Información Voluntaria

Por favor denos la siguiente información acerca de usted. Seleccione la respuesta correcta.

#### Sexo

- ☐ Mujer  
☐ Hombre

#### Edad

- ☐ 1-21 ☐ 41-65  
☐ 22-40 ☐ 65+

#### Incapacidad

- ☐ Si  
☐ No

#### Origen Etnico

- ☐ Blanco (no Hispano)  
☐ Asiático  
☐ Indio Americano  
☐ Hawaino/otra Isla del Pacifico  
☐ Negro  
☐ Hispano  
☐ Otro: \_\_\_\_\_

#### Primer Idioma

- ☐ Inglés  
☐ Español  
☐ Vietnamese  
☐ Chino  
☐ Ruso  
☐ Otro: \_\_\_\_\_

#### Segundo Idioma

- ☐ Inglés  
☐ Español  
☐ Vietnamese  
☐ Chino  
☐ Ruso  
☐ Otro: \_\_\_\_\_

#### Ingresos

- ☐ \$0 – \$12,000  
☐ \$12,000 – \$24,000  
☐ \$25,000 – \$36,000  
☐ \$37,000 – \$48,000  
☐ \$49,000 – \$60,000  
☐ Más de \$61,000

## Plan de Transporte para California Talleres Regionales

Lugar: \_\_\_\_\_

Fecha: \_\_\_\_\_

### Información Voluntaria

A quién representa?

#### (1) Población Minoritaria/organización

- ☐ Asiático  
☐ Indio Americano  
☐ Hawaino/otra Isla del Pacifico  
☐ Negro  
☐ Hispano  
☐ Otro: \_\_\_\_\_

#### (2) Población de bajos ingresos

- ☐ Si  
☐ No

#### (3) Personas con incapacidad

- ☐ Si  
☐ No

#### (4) Personas de la tercera edad

- ☐ Si  
☐ No



## NATIVE AMERICANS

*The Department's Division of Transportation Planning, Office of Regional and Interagency Planning, Native American Liaison Branch has prepared the California Transportation Guide for Native Americans. This document was developed to serve as a tool to assist transportation entities within California—Native American and non-Native American—in understanding the requirements (statutes, regulations, policies) that govern the funding and planning of transportation projects. The guide is specifically designed towards the issues and concerns of federally recognized tribal governments.*

*A review of the table of contents included in this appendix serves as an overview. For a complete copy of the guide, contact the Native American Liaison Branch at (916) 653-3175 or go to their web address at:*

*<http://www.dot.ca.gov/hq/tpp/offices/orip/na/Trans-GuideForNativeAmericans.pdf>*

*The Department's Director's Policy on Working with Native American Communities is also included. This policy states: "When working on issues affecting Native American communities, the Department acts consistently, respectfully and sensitively. When there are regulatory, statutory and/or procedural impediments limiting the Department's ability to work effectively and consistently with Native American communities, the Department seeks to resolve such impediments."*

*Refer to the following guidance documents for direction when working with Native American communities.*

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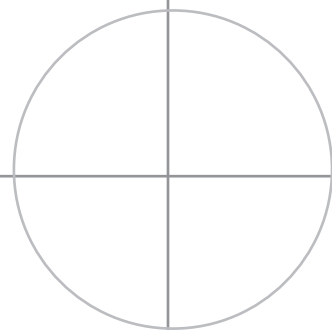
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*Office of the Secretary [Docket OST-2001-8696]*

## **DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries**

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice.

**SUMMARY:** The United States Department of Transportation is publishing policy guidance on Title VI's prohibition against national origin discrimination as it affects limited English proficient persons.

**DATES:** This guidance is effective immediately. Comments must be submitted on or before March 23, 2001. DOT will review all comments and will determine what modifications to the policy guidance, if any, are necessary.

**ADDRESSES:** Interested persons should submit written comments to Marc Brenman, Senior Policy Advisor, Office of Civil Rights, Department of Transportation, 400 7th St. SW., Washington, DC 20590, or marc.brenman@ost.dot.gov; comments may also be submitted by facsimile at 202-366-9371.

**FOR FURTHER INFORMATION CONTACT:** Marc Brenman, Office of Civil Rights, 400 7th St. SW., Washington, DC 20590. Telephone 202-366-1119; e-mail marc.brenman@ost.dot.gov; or David Tochen, Office of the General Counsel, 400 7th St. SW., Washington, DC 20590, 202-366-9153, e-mail david.tochen@ost.dot.gov. Arrangements to receive the policy in an alternative format may be made by contacting the named individuals.

**SUPPLEMENTARY INFORMATION:** Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq. and its implementing regulations provide that no person shall be subjected to discrimination on the basis of race, color, or national origin under any program or activity that receives federal financial assistance.

The purpose of this policy guidance is to clarify the responsibilities of recipients of federal financial assistance from the U.S. Department of Transportation (DOT) ("recipients"), and assist them in fulfilling their responsibilities to limited English proficient (LEP) persons, pursuant to Title VI of the Civil Rights Act of 1964 and implementing regulations. The policy guidance reiterates DOT's longstanding position that in order to avoid discrimination against LEP persons on the grounds of national origin, recipients must take reasonable steps to ensure that such persons have meaningful access to the programs, services, and information those recipients provide, free of charge.

The policy guidance includes an appendix. Appendix A summarizes DOT's Title VI regulations, as they apply to LEP persons.

Dated: January 16, 2001.

**Ronald A. Stroman,**

*Director, Departmental Office of Civil Rights, Department of Transportation.*

# LEP DOT Guidance

## DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries

### I. Background

On August 11, 2000, President Clinton signed Executive Order 13166, entitled “Improving Access to Services for Persons with Limited English Proficiency.” 65 FR 50121 (September 16, 2000). On the same day, the Assistant Attorney General for Civil Rights issued a Policy Guidance Document titled “Enforcement of Title VI of the Civil Rights Act of 1964-National Origin Discrimination Against Persons With Limited English Proficiency” (hereinafter referred to as “DOJ LEP Guidance”), reprinted at 65 FR 50123 (September 16, 2000).

Executive Order 13166 requires Federal departments and agencies extending financial assistance to develop and make available guidance on how recipients should, consistent with the DOJ LEP Guidance and Title VI of the Civil Rights Act of 1964, as amended, assess and address the needs of otherwise eligible limited English proficient persons seeking access to the programs and activities of recipients of federal financial assistance. The DOJ LEP Guidance, in turn, provides general guidance on how recipients can ensure compliance with their Title VI obligation to “take reasonable steps to ensure ‘meaningful’ access to the information and services they provide.” DOJ LEP Guidance, 65 FR at 50124. The DOJ LEP Guidance goes on to provide,

[w]hat constitutes reasonable steps to ensure meaningful access will be contingent on a number of factors. Among the factors to be considered are the number or proportion of LEP persons in the eligible service population, the frequency with which LEP individuals come in contact with the program, the importance of the service provided by the program, and the resources available to the recipient.

**Id.** The DOJ LEP Guidance explains that the identification of “reasonable steps” to provide oral and written services in languages other than English is to be determined on a case-by-case basis through a balancing of all four factors.

The failure to assure that people who are not proficient in English can effectively participate in, and have meaningful access to, a Department of Transportation (DOT) financial assistance recipient’s programs and activities may constitute national origin discrimination prohibited by Title VI and implementing regulations. Supreme Court precedent, and longstanding congressional provisions and federal agency regulations have repeatedly instructed that a nexus exists between language and national origin. As used throughout this Guidance, “DOT” is intended to include all the Department’s operating administrations, components, and Secretarial offices.

This LEP Guidance addresses the key elements that DOT encourages its recipients to consider to ensure meaningful access to programs and activities by all people regardless of race or national origin. The purpose of the Guidance is to assist recipients in complying

with their Title VI responsibilities to ensure that access to their programs or activities, normally provided in English, are accessible to LEP persons. The Guidance is consistent with the requirements of Executive Order 13166 and with the DOJ LEP Guidance.

During the development of this Guidance, DOT has ensured that stakeholders, such as LEP persons, their representative organizations, recipients, and other appropriate individuals and entities have had an adequate opportunity to provide input. Additional input is welcome.

Large numbers of minorities in the United States are linguistically isolated. According to the 1990 U.S. Census, 31.8 million persons or 13% of the total U.S. population (ages 5 and above) speak a language other than English at home. Almost 2 million people do not speak English at all and 4.8 million people do not speak English well. The 1990 U.S. Census also found that various minority populations and subgroups are linguistically isolated: Approximately 4 million Hispanics; approximately 1.6 million Asians and Pacific Islanders; approximately 282,000 Blacks; and approximately 77,000 Native Americans and Alaska Natives. Of those who speak Spanish in the United States, 97% are Hispanic. Research indicates that the correlation between language and national origin is also very high. As of 1989, 72.5% of Chinese Americans speak a language other than English at home. Comparable figures for other Asian Pacific Islander groups exist for Cambodians (81.9%), Vietnamese (80.7%), Laotians (77.4%), Thai (72.5%), Koreans (69.7%), Filipinos (59.9%), Indians (55.3%), and Japanese (40.5%).

School districts in many parts of the country are experiencing a substantial increase in the enrollment of national origin-minority students who cannot speak, read, or write English well enough to participate meaningfully in educational programs without appropriate support services. There are approximately 3.5 million LEP students in the United States. The number of LEP students enrolled in public and nonpublic schools in the United States continues to increase each year. Between 1990 and 1997, the number of LEP students has risen by 57%. Most LEP students have parents whose skills in English are less than that of the students. The reported number of LEP students in K-12 public schools comprises 8% of the total public school enrollment in the United States. All states enroll LEP students. The states with the largest reported number of LEP students are California (1,381,383), Texas (513,634), and Florida (288,603). The states with the largest reported percentage of LEP students are Alaska (26%), New Mexico (24%), and California (22%). Since many public transportation providers also transport students to and from school, these figures are important.

In regard to one state alone, Pennsylvania ranks tenth among all states in the numbers of foreign-born persons who reside within its borders. Many of these individuals come to the United States with limited English skills, and are at varying stages of learning the English language. In all, more than seven percent of Pennsylvania's residents speak a primary language other than English. It is estimated that Philadelphia alone is home

# LEP DOT Guidance

to approximately 30,000 Vietnamese, 25,000 ethnic Chinese, 10,000 Cambodians, and 7,000 Laotians. According to the 1990 Census, approximately 54% of persons in Pennsylvania whose home language is an Asian language do not speak English very well.

Many welfare recipients wrestle with poor job skills, health problems, and lack of transportation, in addition to language barriers. Besides the social, cultural and linguistic barriers, which affect the delivery of adequate transportation services, there are other factors that contribute to the poor social service status of LEP persons. These factors include the following:

- Inadequate number of health care providers and other health care professionals skilled in culturally competent and linguistically appropriate delivery of services.
- Scarcity of trained interpreters at the community level.
- Deficiency of knowledge about appropriate mechanisms to address language barriers in transportation settings.
- Absence of effective partnerships between major mainstream provider organizations and LEP minority communities.
- Low economic status.
- Lack of insurance.
- Organizational barriers.

One recipient reported to DOT as follows, regarding the barriers people who are LEP face in transportation:

Language barriers prohibit people who are LEP from obtaining services and information relating to transportation services and programs. Because people who are LEP are not able to read instructions or correspondence written in English and may not understand verbal information, they often are not aware of regulatory requirements and legal implications of the services they seek. People who are LEP also do not have the ability to read variable message signs which alert them to dangerous driving conditions. When people who are LEP receive Orders or other legal documents, they often do not understand the contents of the correspondence and its implication to their daily lives. People who are LEP may not be able to take advantage of the transit system, which could affect their job and social opportunities. When their home or business property is acquired by the State DOT, they may not be aware of or understand the benefits to which they are entitled. When individuals do not understand or read English, they are hampered in seeking employment opportunities.

It is essential that transportation providers, professionals, and other DOT recipients become informed about their diverse clientele from a linguistic, cultural and social perspective. These individuals should become culturally competent so they can encourage vulnerable LEP minority populations to access and receive appropriate transportation services with more knowledge and confidence.

## Advantages to Recipients Other Than Providing Beneficiary Access to Special Language (Spillover Benefits)

### ***Helping Prevent Complaints:***

DOT receives complaints from beneficiaries alleging that insufficient information has been provided by recipients to beneficiaries in the primary or home language of the beneficiaries. For example, in the current (as of the date of this guidance) Title VI administrative complaint, *West Harlem Environmental Action v. New York Metropolitan Transportation Authority and New York City Transit*, the complainants seek as a part of their requested relief, “Translating all notices about impending depot and bus parking lot developments into Spanish.” Providing such services before complaints are filed may help forestall such complaints and create better relations with beneficiary groups.

### ***Economic Benefits:***

Translations of public transportation service documents may assist tourists and help establish localities as thoughtful and appropriate sites for global trade and investment.

## II. Definitions

### ***Limited-English-Proficient Persons:***

Individuals with a primary or home language other than English who must, due to limited fluency in English, communicate in that primary or home language if the individuals are to have an equal opportunity to participate effectively in or benefit from any aid, service or benefit provided by the transportation provider or other DOT recipient.

### ***Linguistically Isolated:***

This term is defined in the Census as the percentage of the persons in households in which no one over the age of 14 speaks English well, and is used as a direct measure of those persons with a severe language barrier, as distinct from those of foreign origin who speak English well. Those who are linguistically isolated may also be unable to benefit from transportation services and the services of other DOT recipients, and therefore should receive attention from recipients as a high priority.

### ***Federal financial assistance:***

The term Federal financial assistance to which Title VI applies includes but is not limited to grants and loans of Federal funds, grants or donations of Federal property, details of Federal personnel, or any agreement, arrangement or other contract which has as one of its purposes the provision of assistance.

### ***Qualified interpreter:***

Qualified interpreter means an interpreter who is able to interpret effectively, accurately, and impartially, either for individuals with disabilities or for individuals with limited English skills. The interpreter should be able to interpret both receptively and expressively, using any necessary specialized vocabulary.

***Non-English language relay service:***

A telecommunications relay service that allows persons with hearing or speech disabilities who use languages other than English to communicate with voice telephone users in a shared language other than English, through a communications assistant who is fluent in that language.

### III. Legal Background

Title VI of the Civil Rights Act of 1964 and its implementing regulations prohibit recipients of federal financial assistance from discriminating on the basis of race, color, or national origin. In certain circumstances, failure to provide meaningful access to LEP persons is national origin discrimination. Most of the statements in this Guidance pertain to services provided by a recipient, rather than employment by the recipient. However, employment discrimination is covered by Title VI if the federal financial assistance is provided for the purpose of employment or if employment discrimination results in discrimination against program beneficiaries.

In order to avoid discrimination against LEP persons on the grounds of national origin, Title VI and the DOT Title VI regulations require recipients to take reasonable steps to ensure that LEP persons receive the language assistance necessary to afford them meaningful access to their programs and activities. A useful test of compliance with this guidance is to ask the question, “If we do not provide the service in question in a language a beneficiary understands, will the beneficiary still receive essentially the same benefit or service that we provide to others who are fluent in English?”

As discussed below, the framework for compliance with Title VI in this area is a flexible one, and DOT recognizes that a “one-size-fits-all” approach is not satisfactory. For instance, some recipients may have different Title VI LEP concerns in communities affected by their programs and activities, and may have different amounts of resources available. DOT also recognizes that some recipients are already addressing Title VI LEP concerns through existing programs and activities. We have tried to include examples of these efforts under Section IX, entitled “Promising Practices/Best Practices.” More examples are welcome.

Many recipients of Federal financial assistance recognize that the failure to provide language assistance to LEP persons may deny them vital access to programs or activities. The failure to remove language barriers can be attributed to many reasons ranging from ignorance of the fact that some members of the community are unable to communicate in English to intentional discrimination on the basis of national origin. While there is not always a direct relationship between an individual’s language and national origin, language often serves as an identifier of national origin. As the Supreme Court observed in *Hernandez v. New York*,

[I]anguage elicits a response from others,

\* \* \* ranging from admiration and respect, to distance and alienation, to ridicule and scorn. Reactions of the latter type all too often result from or initiate racial hostility

\* \* \* It may well be, for certain ethnic groups and in some communities, that proficiency in a particular language, like skin color, should be treated as a surrogate for race under an equal protection analysis.

500 U.S. 352, 371 (1991). The significant discriminatory effects that result from the failure to provide language assistance to LEP persons, places the treatment of LEP individuals comfortably within the ambit of Title VI and DOT's implementing regulations.

In *Lau v. Nichols*, 414 U.S. 563 (1974), the Supreme Court recognized that, pursuant to Title VI, recipients of Federal financial assistance have an affirmative responsibility to provide LEP persons with a meaningful opportunity to participate in publicly funded programs. Lau involved a group of students of Chinese origin who did not speak English to whom the recipient provided the same services—an education provided solely in English—that it provided students who did speak English. The Court held that, under these circumstances, the school district's practice violated the Title VI prohibition against discrimination on the basis of national origin. The Court observed that "[i]t seems obvious that the Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondents' school system which denies them a meaningful opportunity to participate in the educational program—all earmarks of the discrimination banned by" the Title VI regulations. Courts have applied the doctrine enunciated in Lau both inside and outside of the educational context. It has been considered in contexts as varied as what languages drivers' license tests must be given in, to whether material relating to unemployment benefits must be provided in a language other than English.

Most recently, and in a transportation context, the Eleventh Circuit in *Sandoval v. Hagan*, 197 F.3d 484 (11th Cir. 1999) *petition for certiorari granted*, *Alexander v. Sandoval*, 121 S.Ct. 28 (Sept. 26, 2000) (No. 99-1908) held that the State of Alabama's policy of administering a driver's license examination only in English was a facially neutral practice that had a disproportionate adverse effect on the basis of national origin, in violation of Title VI. The Court specifically noted the nexus between language policies and potential discrimination based on national origin. That is, in *Sandoval*, the vast majority of individuals who were adversely affected by Alabama's English-only driver's license examination policy were of foreign descent. It is interesting to note that the State produced no evidence at trial that non-English speakers pose greater highway safety risks than English speakers.

The Title VI regulations prohibit both intentional discrimination and policies and practices that appear neutral but have a discriminatory effect. Thus, a recipient's policies or



# LEP DOT Guidance

practices regarding the provision of benefits and services to LEP persons need not be intentional to be discriminatory, but may constitute a violation of Title VI if they have a disproportionate adverse effect on LEP persons' ability to access programs and services. Accordingly, it is useful for recipients to examine their policies and practices to determine whether they adversely affect LEP persons disproportionately. This LEP Guidance provides a legal framework to assist recipients in conducting such assessments.

Title VI prohibits discrimination in any program or activity that receives Federal financial assistance. What constitutes a program or activity covered by Title VI was clarified by Congress when the Civil Rights Restoration Act of 1987 (CRRRA) was enacted. The CRRRA provides that, in most cases, when a recipient receives Federal financial assistance for a particular program or activity, all operations of the recipient are covered by Title VI, not just the part of the program that uses the Federal assistance. Thus, all parts of the recipient's operations would be covered by Title VI, even if the Federal assistance is used only by one part.

The Department of Justice is the principal federal agency for coordinating Title VI requirements. The obligation on the part of recipients to address the language needs of beneficiaries has been a long-standing part of its Title VI coordination policies. See 28 CFR 42.405(d)(1) (1976). Moreover, other federal agencies have adopted Title VI enforcement policies that the denial of benefits to non-English speakers may result in a disparate impact based on national origin in violation of Title VI. For example, inability to drive a car adversely affects individuals in the form of lost economic opportunities, social services, and other quality of life pursuits.

## ***State or local "English-Only" laws***

State and local laws may provide additional obligations to serve LEP individuals, but such laws cannot compel recipients of federal financial assistance to violate Title VI. For instance, given our constitutional structure, state or local "English-only" laws do not relieve an entity that receives federal funding from its responsibilities under federal antidiscrimination laws. State and local entities with "English-only" laws are certainly not required to accept federal funding—but if they do, they have to comply with Title VI and its implementing regulations, including their prohibition against national origin discrimination by recipients of federal assistance. Failing to make federally assisted programs and activities accessible to individuals who are LEP will, in certain circumstances, violate Title VI.

In *Sandoval v. Hagan*, the Court of Appeals for the Eleventh Circuit found that Alabama's "English-Only policy" had a significant disparate impact on foreign-born individuals, and imposed significant adversity on individuals by excluding otherwise qualified drivers from obtaining licenses. It enjoined the continued use of the "English-Only policy" and ordered Alabama to submit a plan for compliance. People with licenses can get to work in places not served by public transportation and earn better wages. The inability



to drive also may stand in the way of satisfying other important needs, such as the need to get emergency medical attention, particularly in rural areas not served by public transportation. Additionally, driver's licenses are the most common form of identification in this country; without one, it is difficult to take part in the life of the community—opening a bank account, cashing a check, getting a library card, etc. For these many reasons, the inability of LEP persons to obtain driver's licenses presents serious problems.

## IV. Ensuring Meaningful Access to LEP Persons

Title VI and its regulations require recipients to take reasonable steps to ensure “meaningful” access to DOT recipients’ programs and activities. The key to providing meaningful access to LEP persons is to ensure that recipients and LEP beneficiaries can communicate effectively and act appropriately based on that communication. Thus, DOT recipients should take reasonable steps to ensure that LEP persons are given adequate information, are able to understand that information, and are able to participate effectively in recipient programs or activities, where appropriate. As the demographics of the United States continue to change and the proportion of LEP communities and populations continue to grow, a recipient’s challenge (as well as DOT’s challenge) will be to develop linguistically appropriate and effective methods of communication with LEP persons within the usual, tight resource constraints.

### ***A. Assessment of Meaningful Access***

DOT’s main focus when evaluating a Title VI complaint based on allegations of national origin discrimination against LEP persons will be whether a recipient has taken reasonable steps to eliminate barriers to meaningful communication with LEP individuals and to provide necessary services equivalent to those provided to people who are fully English proficient. What “reasonable steps” should be taken will depend upon a number of factors. These factors include the following:

- The number and proportion of LEP persons potentially served by the recipient’s programs or activities, and the variety of languages spoken in the recipient’s service area:

The recipient should consider the number or proportion of people who will be excluded from participation in programs or activities without efforts to remove language barriers. Programs and activities that affect a few or even one LEP person are subject to the Title VI obligation to take reasonable steps to provide meaningful opportunities to obtain services. Nevertheless, the steps that are reasonable for a recipient whose programs or activities affect one LEP person a year may be different than those expected from a recipient whose program or activity affects many LEP persons on a regular basis. However, DOT encourages even those recipients whose programs or activities affect very few LEP persons on an infrequent basis to consider reasonable steps for involvement of LEP persons and to plan for situations in which LEP persons will be affected under the program or activity in question. This plan need not be intricate; it may be as simple

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as having certain public notices translated into a language other than English, providing an interpreter under certain conditions, or making available technological solutions such as a telephone language line.

- The frequency with which LEP individuals are affected by the program or activity:

The frequency with which LEP persons are affected by the programs or activities is also important. DOT encourages recipients to take into account the frequency with which the recipient's program or activity may affect LEP persons in its service area and to have the flexibility to tailor its actions to those needs. For example, if the recipient knows that there is a large LEP community that exists and that community is often impacted by the recipient's programs and activities, it may want to regularly translate notices of public hearings and post them in areas where LEP individuals will see them. DOT encourages recipients to use communication methods likely to reach the affected community (e.g., insert information with utility bills, place public service announcements on local radio shows, place notices on bulletin boards in grocery stores, houses of worship, community newspapers and community centers). In the notices, you can provide the option of translation services at public hearings if individuals contact you by a certain date. This way, if no one responds you do not expend valuable resources when no actual need for translation services exists.

Notices and information that are generally available to the public should be made available to substantial LEP populations. For example, weather and road condition telephone lines and websites should be available in translation. In areas with severe weather, such notices will probably rise to the level of safety issues, and therefore require the higher level of service described elsewhere in this guidance.

- The importance of the effect of the recipient's program or activity on LEP persons, bearing in mind that transportation is considered an essential service to participation in modern society:

The importance of the effects of the recipient's program or activity on LEP persons has a direct bearing on the reasonableness of steps taken to ensure meaningful participation. DOT encourages you to take more vigorous steps where the denial or delay of access may have more crucial implications than in situations that are not as crucial to one's day-to-day activities. For example, the obligations of federally assisted health, emergency, hazardous materials, and safety efforts differ from those of a Federally-assisted program where safety or health is not at stake. DOT encourages you to consider the importance of the participation in the program or activity to individuals both immediately and in the long-term, as well as synergistic effects. In a study done in 1995, all Emergency Medical Services (EMS) personnel who participated referred to language as a principal challenge in effectively working with Hispanic community members. In addition, many recently arrived Hispanics are not accustomed to using the telephone to access emergency medical services. Such circumstances justify greater efforts by recipients to educate

LEP individuals, as discussed elsewhere in this Guidance. In addition, inability to access public transportation may adversely effect ability to obtain health care, education, and jobs.

- The resources available to the recipient, and whether the recipient has budgeted for provision of special language services:

Resources of a recipient may be a factor in determining the level and kind of language services it should provide. Larger recipients with more resources will have more language service responsibilities than smaller recipients with few resources. DOT will use a reasonableness standard in evaluating whether a recipient's efforts are sufficient. Where excessive cost is proffered by a recipient as a reason for not undertaking necessary special language services, DOT will evaluate the situation on a case-by-case basis. DOT's evaluation will include a consideration of the totality of the recipient's circumstances, including the size of the budget of the largest organizational entity which supervises the work of the program, project or activity that directly receives DOT financial assistance. For example, for a unit of a state department of transportation, the budget of the entire state DOT will be used as a point of reference. Other considerations will include those listed elsewhere in this Guidance, such as the size of the LEP population needing services, the degree to which such populations have been historically excluded from services, the availability of less costly alternative service modalities, whether the costs can be amortized over time or are a one-time expense, whether services can be phased in to avoid excessive cost in any one year, the possibility of alternate sources of funds to pay for the necessary services, whether the services are required in response to complaints or law suits, and how long the recipient has been on notice that the special language services should be provided. Note that Title VI has been in existence since 1964, and that recipients have been on notice that discrimination on the basis of national origin has been prohibited since then.

- The level of services provided to fully English proficient people;
- Whether LEP persons are being excluded from services, or being provided a lower level of services:

Only under rare circumstances could this exclusion be justified, and the burden of proving the need for the exclusion would be very high. Example 1: The recipient provides no services to a neighborhood where LEP people live, while providing services to a neighborhood where fully English proficient people live. Example 2: Several years ago, a job access program funded by DOT's Federal Transit Administration stated in its brochures that eligible applicants must "speak English." Note that the prohibition on exclusion due to national origin would also apply to situations where a recipient excluded a beneficiary from bringing an interpreter to a meeting, test, or other formal situation with the recipient. Although DOT discourages reliance by recipients on beneficiary-supplied interpreters, if the beneficiary desires to use one, and the recipient does not supply

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an interpreter, the recipient should permit his/her use. DOT recognizes that issues of security of testing are sometimes thought to arise when an non-recipient-supplied interpreter translates for a beneficiary. These issues are the responsibility of the recipient. If security is felt to be a potential problem by a recipient, the recipient bears the burden of supplying the interpreter.

- Whether the recipient has adequate justification for restrictions, if any, on special language services or speaking languages other than English:

Such justifications would be accepted only in rare circumstances. Assertions of safety justifications would generally not be accepted unless accompanied by statistical and/or scientific causality studies and evidence showing a positive correlation between limited English proficiency and crash and death/injury rates at rates substantially higher than would be expected due to chance.

There is no one-size fits all solution for Title VI compliance with respect to LEP persons. When investigating a Title VI complaint, DOT will assess language assistance allegations on a case-by-case basis, and will afford considerable flexibility to recipients to determine precisely how to fulfill this obligation. DOT will focus on the end result—whether recipients have taken the necessary steps to ensure that LEP persons have meaningful access to participate in their programs and activities, and whether those services are being provided so that LEP persons have an equal opportunity to benefit from recipients’ services.

## V. Compliance and Enforcement

The recommendations outlined in this Guidance are not intended to be exhaustive. Recipients should establish and implement policies and procedures for providing language assistance sufficient to fulfill their Title VI responsibilities and provide LEP persons with meaningful access to services. DOT enforces Title VI as it applies to recipients’ responsibilities to LEP persons through the procedures provided for in DOT’s Title VI regulations (49 CFR Part 21, see Appendix A), and in appropriate DOT operating administration regulations. These procedures include complaint investigations, compliance reviews, alternative dispute resolution, efforts to secure voluntary compliance and technical assistance.

DOT’s Title VI regulations provide that the agency will investigate whenever it receives a complaint, report or other information that alleges or indicates possible noncompliance with Title VI. If the investigation results in a finding of compliance, DOT will inform the recipient and the complainant in writing of this determination, including the basis for the determination. If the investigation results in a finding of noncompliance, DOT must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance, and must attempt to secure voluntary compliance through informal

means. If the matter cannot be resolved informally, DOT must secure compliance through (a) the termination of Federal assistance after the recipient has been given an opportunity for an administrative hearing, (b) referral to DOJ for injunctive relief or other enforcement proceedings, or (c) any other means authorized by law.

As the Title VI regulations set forth in the Appendix indicate, DOT has a legal obligation to seek voluntary compliance in resolving cases and cannot seek the termination of funds until it has engaged in voluntary compliance efforts and has determined that compliance cannot be secured voluntarily. During these efforts to secure voluntary compliance, DOT consults with and assists recipients entities in exploring cost effective ways of coming into compliance, by sharing information on potential community resources, by increasing awareness of emerging technologies, by sharing information on how other recipients entities have addressed the language needs of diverse populations, and by proposing reasonable timetables for achieving compliance.

Whenever possible, DOT provides recipients with technical assistance upon request and an opportunity to come into voluntary compliance with Title VI prior to initiating formal enforcement proceedings. In determining a recipient's compliance with Title VI, the Departmental Office of Civil Rights' (DOCR) primary concern is to ensure that the recipient's policies and procedures allow LEP persons to overcome language differences that result in barriers and have a meaningful opportunity to participate in and access programs, services and benefits to the same extent as fully English proficient persons. A recipients's appropriate use of the methods and options discussed in this policy guidance will be viewed by DOCR as evidence of a recipient's willingness to comply voluntarily with its Title VI obligations.

Further, when reviewing any claim of discrimination, DOT considers the severity of the adverse impact on LEP persons, the egregiousness or pervasiveness of any adverse action taken by a recipient, and whether the recipient has shown an intent to discriminate.

### ***Assurance Forms***

When organizations apply for DOT financial assistance, they submit an assurance with their applications that they will comply with the requirements of DOT's regulations implementing Title VI with respect to their programs and activities. When they receive DOT financial assistance, they accept the obligation to comply with DOT's Title VI implementing regulations. These assurances should be understood to include provision of services to national origin minority persons who are limited English proficient.

## **VI. Framework for Language Assistance**

DOT has determined that effective language assistance programs usually address each of the elements described below. The failure to incorporate or implement one or more of these elements does not necessarily indicate noncompliance with Title VI. When

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investigating Title VI complaints, DOT will review the totality of the circumstances to determine whether LEP persons have had meaningful access to participate effectively in a recipient's programs and activities.

## **1. Needs Assessment**

A recipient should conduct a thorough assessment of the language needs of the population and communities affected by the recipient.

The first key to ensuring meaningful access to LEP persons is to assess the language needs of the affected population and communities served, through application of the analysis described elsewhere in this Guidance. Ways to assess language needs include identifying the non-English languages used in communities affected by the recipient, estimating how many people speak each language, where they live, and how well they are currently accessing services provided to those who are fully English proficient. After identifying LEP communities, DOT encourages recipients to consider any barriers to communication with these communities. It is possible that, in certain instances, the results of the assessment may indicate that, although LEP communities are affected by the programs and activities, there are no barriers to communication with these communities, because they are bilingual, for instance, or do not need or want translation services.

An approach may be developed to identify geographic areas where LEP communities live using existing resources such as census data, data from local organizations and community groups, faith-based groups that provide services in languages other than English, immigrant aid organizations, state refugee coordinators, non-English media outlets, and school district LEP statistics. The latter are particularly valuable, since all school districts are required to maintain data on LEP students and provide necessary special language services. It is important to collaborate with community groups and other appropriate stakeholders to develop the criteria for identifying geographic areas. Once the areas are identified, the recipient can work with the affected communities and stakeholders to determine their language assistance needs. The recipient may also choose to identify actual or potential populations within a particular service area or area of responsibility.

Specifically, DOT encourages recipients to identify linguistically isolated populations or job sites in which LEP persons represent a significant proportion of the workforce (e.g., manual labor, hotel cleaning, food preparation, auto supplies, etc.) Transportation entities in particular should be aware of the potential difficulties LEP people may have in public transportation from home to work, health facilities, schools, shopping, faith-based facilities, daycare, and leisure activities. New immigrants to the United States from non-English speaking countries may be especially in need of special language services. Note that Title VI of the Civil Rights Act of 1964 covers "people in the United States." Thus, recipients may generally not refuse to provide services to non-citizens, regardless of immigration status.

Identifying the points of contact in the program or activity where language assistance is likely to be needed, identifying the resources that will be needed to provide effective language assistance, identifying the location and availability of these resources, and identifying the arrangements that should be made to access these resources in a timely manner are important factors to ensure effective provision of services.

## **2. Written Language Assistance Plan**

Recipients should develop and implement written language assistance plans that will ensure meaningful opportunities for LEP persons to access their programs and activities and effectively participate in them.

A recipient can help ensure effective communication with LEP persons by developing and implementing a comprehensive, written language assistance plan. Such a plan should include policies and procedures for identifying and assessing the language needs of LEP persons, and provide for a range of written and oral language assistance options, periodic training of staff, actual provision of services, and monitoring of the program. DOT encourages recipients to consider the transportation needs of the LEP community affected by the recipient's programs and activities while developing this plan. The factor analysis set forth in this Guidance should be the starting point for identifying areas in which language services are needed.

DOT encourages recipients to consider one or more of the following ideas as they develop language assistance plans:

- Assigning primary responsibility for development and implementation of the plan to an appropriate manager or supervisor.
- Preparing a written summary of results from the needs assessment (discussed above).
- Identifying actions already being taken and existing tools that can be used to provide meaningful access to LEP individuals, and how well they work.
- Creating an inventory of existing materials that have been translated into other languages to assist LEP individuals.
- Regularly updating the inventory of translated materials.
- Drafting a plan that is specific and detailed, yet flexible enough to respond to existing or potential needs over an appropriate time period (i.e., five years).
- Ensuring that translation arrangements have quality control (i.e., mechanisms are in place to ensure that the translation accurately and appropriately conveys the substance of what is contained in the written materials).
- Distributing the names of organizational contacts who will respond to inquiries and requests regarding access to programs and activities by LEP individuals, in appropriate media and publications.
- Addressing the appropriate mix of written and oral language assistance to ensure effective communication with the LEP population.



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A plan should generally include:

- Who is responsible for each step.
- When each step is expected to be completed. (Generally speaking, the more vital the service, the sooner it should be provided.)
- What standards and criteria are to be applied to measure the effectiveness of each step.
- What resources will be devoted to each step.
- How the recipient will document implementation of each step.

### **3. Staff Training**

Recipients should ensure that staff understand the recipient's language assistance policy and are capable of carrying it out.

The success of recipients' LEP/Title VI activities will depend on the staff's knowledge, credibility, and actions. DOT encourages recipients to disseminate the recipient's policy to all employees likely to have contact with LEP persons and to periodically train employees. Effective training, which includes cultural and community relations sensitization, is one way to ensure that there is not a gap between your policies and procedures and the actual practices of employees who interact with LEP persons. Effective training ensures that employees are knowledgeable and aware of LEP policies and procedures, can work effectively with in-person and telephone interpreters, and understand the dynamics of interpretation between beneficiaries, providers and interpreters. It is important that this training be part of the orientation for new employees and all employees in beneficiary contact positions should be properly trained. Given the high turnover rate among some types of employees, a recipient may find it useful to maintain a training registry that records the names and dates of employees' training.

### **4. Provision of Special Language Assistance**

Recipients must actually provide necessary services to LEP persons.

Most important to any LEP plan is to actually provide the necessary services. Actual provision of services includes notification of the availability of services. A vital part of an effective compliance program includes having effective methods for notifying LEP persons regarding their right to language assistance and the availability of such assistance free of charge. These methods include but are not limited to:

- Use of language identification cards that allow LEP beneficiaries to identify their language needs to staff and for staff to identify the language needs of applicants and clients. To be effective, the cards (e.g., "I speak cards") should invite the LEP person to identify the language he/she speaks. This identification can be recorded in the LEP person's file, if the recipient keeps such files on beneficiaries.



- Posting and maintaining signs in regularly encountered non-English languages in waiting rooms, reception areas and other initial points of entry. In order to be effective, these signs should inform applicants and beneficiaries of their right to free language assistance services and invite them to identify themselves as persons needing such services.
- Translation of application forms and instructional, informational and other written materials into appropriate non-English languages by competent translators. For LEP persons whose language does not exist in written form, assistance should be provided from an interpreter to explain the contents of the document. LEP persons may need assistance, for example, however, in filling out forms such as those for transit half-fare benefits or paratransit eligibility under the Americans with Disabilities Act.
- Uniform procedures for timely and effective telephone communication between staff and LEP persons. This should include instructions for English-speaking employees to obtain assistance from interpreters or bilingual staff when receiving calls from or initiating calls to LEP persons, and
- Inclusion of statements about the services available and the right to free language assistance services, in appropriate non-English languages, in brochures, booklets, outreach and recruitment information and other materials that are routinely disseminated to the public.

## **5. Monitoring**

Recipients should conduct regular oversight of their language assistance programs to ensure that LEP persons can meaningfully access their programs and activities. It is also important that recipients regularly monitor their language assistance programs by assessing the following:

- Current LEP demographics of the population that is affected by the recipient's programs and activities.
- Current communication needs of LEP communities.
- Whether the recipient's plan is adequately supported so that it has a realistic chance of success.
- Whether existing assistance is meeting the needs of LEP persons.
- Whether recipient staff are knowledgeable about policies and procedures and how to implement them.
- Whether sources of, and arrangements for, assistance are still current and viable.
- Whether the plan is periodically evaluated and revised, as necessary. Note that recipients are required to modify their plans and programs of service if they prove to be unsuccessful after a legitimate trial.

- Number and type of grievances and complaints received by the recipient or against the recipient by DOJ or DOT, alleging lack of provision of services due to limited English proficiency.

One way to evaluate the language assistance program is to seek and obtain feedback from the communities served. DOT believes that compliance with the Title VI language assistance obligation is most likely met when a recipient continuously monitors its program and makes modifications where necessary, including meeting public participation requirements under other initiatives such as environmental justice.

## VII. Ways of Providing Language Services

Once the recipient has determined that language services are needed, there are three main ways of providing those services: oral interpretation; written translation; and alternate, non-verbal methods. The following provides information on these three methods.

### ***A. Oral Language Interpretation***

In designing an effective language assistance program, a recipient develops procedures for obtaining and providing trained and competent interpreters and other oral language assistance services, in a timely manner, by taking some or all of the following steps:

- Hiring bilingual staff who are trained and competent in the skill of interpreting.
- Hiring staff interpreters who are trained and competent in the skill of interpreting.
- Contracting with an outside interpreter service for trained and competent interpreters.
- Arranging formally for the services of voluntary community interpreters who are trained and competent in the skill of interpreting.
- Arranging/contracting for the use of a telephone language interpreter service.

***Bilingual Staff***—Hiring bilingual staff for beneficiary contact positions facilitates participation by LEP persons. However, where there are a variety of LEP language groups in a recipient's service area, this option may be insufficient to meet the needs of all LEP applicants and clients. Where this option is insufficient to meet these needs, the recipient should provide additional and timely language assistance. Bilingual staff should be trained and should demonstrate competence as interpreters.

***Staff Interpreters***—Paid staff interpreters are especially appropriate where there is a frequent and/or regular need for interpreting services. These persons should be competent and readily available.

***Contract Interpreters***—The use of contract interpreters may be an option for recipients that have an infrequent need for interpreting services, have less common LEP language groups in their service areas, or need to supplement their in-house capabilities on an as needed basis. Such contract interpreters should be readily available and competent.

**Community Volunteers**—Use of community volunteers may provide recipients with a cost-effective method for providing interpreter services. However, experience has shown that to use community volunteers effectively, recipients should ensure that formal arrangements for interpreting services are made with community organizations so that these organizations are not subjected to ad hoc requests for assistance. In addition, recipients should ensure that these volunteers are competent as interpreters and understand their obligation to maintain client confidentiality. Additional language assistance should be provided where competent volunteers are not readily available during all hours of service.

**Telephone Interpreter Lines**—A telephone interpreter service line may be a useful option as a supplemental system, or may be useful when a recipient encounters a language that it cannot otherwise accommodate. Such a service often offers interpreting assistance in many different languages and usually can provide the service in quick response to a request. However, recipients should be aware that such services may not always have readily available interpreters who are familiar with the terminology peculiar to the particular program or service. It is important that a recipient not offer this as the only language assistance option except where other language assistance options are unavailable (e.g., in a rural area visited by a LEP beneficiary who speaks a language that is not usually encountered in the area).

## **B. Translation of Written Materials**

An effective language assistance program ensures that written materials that are routinely provided in English to applicants, clients and the public are available in regularly encountered languages other than English. It is particularly important to ensure that vital documents, such as applications, consent forms, letters containing important information regarding participation in a program (such as a cover letter outlining conditions of participation in a paratransit program), notices pertaining to the reduction, denial or termination of services or benefits or that require a response from beneficiaries, notices advising LEP persons of the availability of free language assistance, and other outreach materials be translated into the non-English language of each regularly encountered LEP group eligible to be served or likely to be directly affected by the recipient's program. Materials with a "gatekeeper" function, such as those concerning the necessity for insurance and licensure, should be translated. Notices for the public should be published in the primary non-English language media serving the recipient's service area. However, note the emphasis elsewhere in this document on exploring non-verbal/non-language based approaches to communication. Warning signs should be posted in the languages spoken by people likely to encounter the signs.

Services such as public safety, police, and law enforcement that might result in the diminution of personal freedom, in fines and penalties, in loss of driving privileges, or in "points" on driving records, are subject to a high burden on the recipient that provides such services, in terms of timeliness and quality of translation of key documents.

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Many DOT recipients are engaged in such services—such as state departments of public safety, state motor vehicle departments, transit and railroad police, and airport security. More complete guidance for such special language services by law enforcement personnel is available through the Department of Justice.

It is important to ensure that written materials routinely provided by a recipient in English also are provided in regularly encountered languages other than English. It is particularly important to ensure that vital documents are translated into the non-English language of each regularly encountered LEP group eligible to be served or likely to be affected by the recipient's program or activity. A document will be considered vital if it contains information that is critical for obtaining federal services and/or benefits, or is required by law. Vital documents include, for example: applications; consent and complaint forms; notices of rights and disciplinary action; notices advising LEP persons of the availability of free language assistance; and written tests that do not assess English language competency, but rather competency for a particular license, job, or skill for which English competency is not required; and letters or notices that require a response from the beneficiary or client. For instance, if a complaint form is necessary in order to file a claim with an agency, that complaint form would be vital. Nonvital information includes documents that are not critical to access such benefits and services.

Vital documents should be translated when a significant number or percentage of the population eligible to be served, or likely to be directly affected by the program/activity, needs services or information in a language other than English to communicate effectively. For many larger documents, translation of vital information contained within the document will suffice and the documents need not be translated in their entirety.

It may sometimes be difficult to draw a distinction between vital and non-vital documents, particularly when considering outreach or other documents designed to raise awareness of rights or services. Though meaningful access to a program requires an awareness of the program's existence, DOT recognizes that it would be impossible, from a practical and costbased perspective, to translate every piece of outreach material into every language. Title VI does not require this of recipients. Nevertheless, because in some circumstances lack of awareness of the existence of a particular program may effectively deny LEP individuals meaningful access, it is important to continually survey/assess the needs of eligible service populations to determine whether certain critical outreach materials should be translated into other languages.

DOT's National Highway Traffic Safety Administration (NHTSA) has found that direct translation of safety pamphlets and brochures that have been developed in English into a non-English language often results in an inferior or inappropriate product due to the many dialects and linguistic styles of foreign languages and because the materials were not designed to originally focus on a particular dialect-speaking audience. A better approach is to develop the materials in the language and dialect in which

they are intended to be used. Also, involving the target community in review of the final brochure or product can eliminate inappropriate word choice and increase the effectiveness of the messages. Community group involvement can also provide a ready means of distribution of the materials.

### ***C. Use of Alternative Communication Methods and Devices:***

To alleviate the concerns of recipients, and to reduce cost, DOT encourages recipients to explore use of methods and devices that do not use language. For example, use of pictograms, symbol signs, standard symbolic signs (SMS's), diagrams, colorcoded warnings, illustrations, graphics, and pictures can be considered. A major example of the use of such methods in transportation infrastructure is the laminated plastic safety information cards in the seat back pouches on commercial airliners. These cards communicate a great deal of important safety information using very few words in any language. Schematic maps can similarly quickly communicate large amounts of information without words. Standard symbols such as are used on international roads and at the Olympics can be used. Use of such non-verbal methods will also help alleviate problems of communication for those who are illiterate or partially literate, those who are too young to read, and those with hearing impairments. Use of symbol signs may help elderly drivers as well, since signing in highway work areas raises sign legibility issues for older drivers. It may be noted that there is overlap between older drivers and those who are more likely to be LEP in some subpopulations, such as the Navajo. Symbol signs and pictograms also benefit globalization of trade and travel.

***Example 1.*** "Transportation engineers world-wide are moving toward the use of symbol signs in place of word signs because they are easier for people to comprehend in a shorter amount of time. Easily recognized symbols also accommodate people who cannot read English." (Irvine, California, Traffic Research and Control Center (ITRAC))

***Example 2.*** "Universal design considerations also offer the potential to benefit persons with a cognitive disability. For example, standardized symbols, pictures, and color coding offer benefits to persons with a cognitive disability. If written information is provided, the messages should be short and clear. Repetition of symbols and information also helps reduce the difficulty of remembering information." (Transport Canada, "Technologies for travelers with sensory or cognitive disabilities (TP 13247E)")

A Federal Highway Administration (FHWA) study reached these conclusions about symbol signs:

Minimize symbol complexity by using very few details.

Maximize the distance between symbol sign elements.

Use representational rather than abstract symbols.

Use solid rather than outline figures for designs.

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Standardize the design of arrowheads, human figures, and vehicles. Retain maximum contrast between the symbol and the sign background.

Use of pictograms in dynamic signs can be considered. These are in use in Europe. Regulatory speed limit messages are presented using a number in a red circle, which is analogous to the European static speed limit sign. Other symbol messages presented to drivers in dynamic message signs include congestion, snow, and diversion (detour) directions. Research is underway to develop additional symbols for inclusion in the European standards for traffic control devices. Two specific conditions for which symbols are being explored are “fog” and “accident.”

**Example:** NHTSA, 49 CFR Parts 571 and 575, Consumer Information Regulations: Utility Vehicle Label; Final Rule, Federal Register, March 9, 1999 (Volume 64, Number 45) “The rule requires the label’s header to have an alert symbol (a triangle containing an exclamation point) followed by the statement “WARNING: Higher Rollover Risk” in black text on a yellow background. The following three statements must appear below the header in the center of the label: “Avoid Abrupt Maneuvers and Excessive Speed,” “Always Buckle Up,” and “See Owner’s Manual For Further Information.” The rule specifies that the label must contain two pictograms: one showing a tilting utility vehicle on the left of the label, and the other showing a seated vehicle occupant with a secured three-point belt system on the right. The pictograms and the statement must be in black on a white background.” The label was revised from 77 words to 19 words and two pictograms. Permission was granted to companies to produce the label with both the required English words and a translation into other languages. Labels have been produced with French and Spanish translations.

There are opportunities for higher technology approaches, such as use of multimedia pictograms, holograms, photographs, looped videotapes, embedded picture instructions to represent destinations and instructions, information kiosks with multiple languages, courtesy telephones at stations linked to a central number with translators, and voice recognition.

## VIII. Application of this Guidance for DOT Recipients

### ***Grievance or Complaint Procedures***

Generally, a recipient should maintain a written and publicly known grievance or complaint procedure available to members of the public, so that LEP persons can bring alleged problems with lack of services to the recipient’s attention for resolution. DOT encourages recipients to resolve such problems at the lowest level possible and encourages use of alternate dispute resolution. Grievance and complaint procedures should be prompt and equitable while obeying generally accepted elements of due process. However, they need not be overly formal. Existing grievance or complaint procedures can be used if they are modified as necessary to clarify their availability for use with LEP disputes and are made available in languages used in the community service area.

## ***LEP Community Outreach and Education***

It may be useful for the recipient to have an established, formal linkage between a minority community-based organization and a transportation provider or infrastructure entity. The linkage can be confirmed by a signed agreement between the applicant and linkage organizations which specifies in detail the roles and resources that each entity will bring to the project, and states the duration and terms of the linkage. The document can be signed by an individual with the authority to represent the community-based organization (e.g., president, chief executive officer, executive director).

Comprehensive outreach includes the following:

- Use of ethnic media, such as radio, television, newspapers, magazines and websites.
- Use of faith-based organizations, such as temples, mosques and churches.
- Work with community-based organizations at the local (city or county) level that provide social services, health care, classes, etc. to target LEP communities.
- Outreach to schools with substantial enrollments of LEP children.
- Ensure that translated materials provide referrals to telephone numbers or websites that are linguistically accessible (i.e., a flyer in Vietnamese should refer the caller to a hotline with Vietnamese-speaking workers).
- Nontraditional channels, such as day care centers and Headstart programs.
- Forming community groups led by a trained lay educator (a promotore or promotora) to enable adults to discuss issues and learn from each other. The content of community outreach is important. For example, DOT has been told by a coalition of Southeast Asian-American advocacy groups that many people in their communities lack basic information about transportation services. The information needs include safety and security information, such as what may not be carried on airplanes and questions that will be asked at the ticket counter. Knowledge about public participation opportunities in transportation planning is needed. This area should especially be addressed by metropolitan planning organizations (MPOs).

DOT encourages partnerships among federal recipients and other human services organizations. How these can work is shown in the following example. "Expand existing loan programs that assist welfare recipients in purchasing cars and increase accessibility to public transportation. Counties should expand existing programs or create new programs that lend money to welfare recipients and other low-income families to purchase cars. Counties should also explore savings accounts that enable recipients to save for purchasing their own cars, without jeopardizing their financial eligibility for welfare cash aid. ERA also recommends that counties partner with transportation agencies to translate transportation information and resources into other languages." (Equal Rights Advocates [ERA's] Immigrant Women and Welfare study)



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## ***Transportation Planning***

Recipients' transportation plans should identify how the needs of LEP persons will be met where a significant number of such persons can be reasonably expected to need transportation services.

## ***Numerical Thresholds***

DOT has determined that it will not specify numerical or percentage thresholds for LEP populations that need to be served by recipients. Generally, the larger the number or percent of LEP beneficiaries within a recipient's service area who speak a particular primary or home language, the more thorough, intensive, and speedy the special language services should be. The extent of the service area will in part determine the number or percent of the covered population. For example, the service area of state departments of transportation will generally be considered to be the entire state. The service area of a metropolitan planning organization will be the geographic area for which the MPO provides surface transportation planning services. International airports serve a very broad geographical area, and may be presented with special problems in dealing with a large number of languages. Such difficulties will be taken into consideration by DOT, but it is expected that such transportation providers will know a great deal of demographic information about their users. Similar reasoning applies to national networks like AMTRAK. Note that the population includes those who may potentially be served by the recipient, rather than just those who are presently being served. This is to reach those who are not presently receiving adequate or equitable services from the recipient, but might receive such services if the recipient were to provide special language services to them. DOT recommends that recipients become aware of the changing demographics of their service areas, especially in terms of increasing numbers and percents of languages used, so that recipients can prepare for future service needs.

## ***Emergency Services***

DOT funds a number of first responder, emergency, public safety, and hazardous materials services. Because of the safety and health aspects of these services, the need for special language services delivered without noticeable delay by recipients are heightened. Workers in these areas render vitally important services whose very nature requires quick action to protect public safety and health; quick assessment of a situation, often based on input from community members on the spot; the establishment of a close relationship with the client or patient that is based on empathy, confidence and mutual trust; and direction to affected people that must be carried out with specificity to be effective. Such relationships depend heavily on the free flow of communication between professional and client. This essential exchange of information is difficult when the two parties involved speak different languages; it may be impeded further by the presence of an unqualified third person who attempts to serve as an interpreter.

Some safety, emergency, and hazardous materials service providers have sought to bridge the language gap by encouraging LEP clients to provide their own interpreters



as an alternative to the agency's hiring of qualified bilingual employees or interpreters. Persons of limited English proficiency must sometimes rely on their minor children to interpret for them during safety incidents. Alternatively, these beneficiaries/clients may be required to call upon neighbors or even strangers they encounter at the site of the incident to act as interpreters or translators.

These practices have severe drawbacks and may violate Title VI of the Civil Rights Act of 1964. In each case, the impediments to effective communication and adequate service are formidable. The beneficiary's untrained "interpreter" is often unable to understand the concepts or official terminology he or she is being asked to interpret or translate. Even if the interpreter possesses the necessary language and comprehension skills, his or her mere presence may obstruct the flow of emergency information to the provider.

When these types of circumstances are encountered, the level and quality of safety and emergency services available to LEP persons stand in stark conflict to Title VI's promise of equal access to federally assisted programs and activities. Services denied, delayed or provided under adverse circumstances have serious and sometimes life threatening consequences for a LEP person and may constitute discrimination on the basis of national origin, in violation of Title VI. Accommodation of these language differences through the provision of effective language assistance will promote compliance with Title VI.

## **Signage**

Signage along highways presents a very difficult LEP topic, due to the large number of signs, the cost of changing them, and limitations on space on the sign. Nevertheless, at least one state department of transportation has reported that some LEP persons may not have the ability to read variable message signs that alert them to dangerous driving conditions. Due to the lifesaving potential, and subject to technical and scientific study as to its viability regarding message length and time, DOT recommends that recipients explore the possibility of either using pictorial or symbol messages or translating messages into frequently encountered languages on variable message signs that report dangerous driving conditions.

Regarding multilingual signage, a county long range transportation plan has noted, "Intermodal multilingual referrals and advertising of customer services should be developed. This can include visual, auditive, and print information on how to use the various modes. Appropriate multilingual signage for modes (e.g., bus stops, mode shares, etc.) could be developed and implemented with international symbol signs. Buses could include next stop digital displays inside the bus and/or tone auditory cues for the visually impaired." (Bernalillo County, New Mexico, Long Range Transportation Plan, 1993) As discussed elsewhere in this Guidance, non-verbal methods can be considered, such as reducing the amount of text (e.g. "Glover Park," "Massachusetts Avenue," "Addison Road", etc.) and replacing it with numbers, letters, or colors (e.g. D2, L6, Blue Line).

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## **Literacy**

Recipients should be sensitive to literacy levels of LEP consumers and clients. Some immigrants and refugees come from pre-literate societies and are not literate in their native language, let alone English, or are not literate for other reasons. However, note that literacy is not covered by Title VI. It makes good sense to consider literacy issues when covering LEP issues, because in some cases, the solutions are the same. See the discussion above about using symbol signs, pictograms, and illustrations. Other solutions include the following:

- Contract and work with community-based organizations to review translated materials for appropriateness of language.
- Use focus groups to test messages and language appropriateness, especially if documents are being translated for the first time.
- Be aware that written translations may not be effective for some communities but that there are alternative mechanisms such as the use of audio or video tapes to provide information.

How does low literacy, non-literacy, use of non-written languages, blindness and deafness among LEP populations affect the responsibilities of recipients? Effective communication in any language requires an understanding of the literacy levels of the eligible populations. Where a LEP person has a limited understanding of important matters or cannot read, access to the program is complicated by factors not directly related to language. Under these circumstances, a recipient should provide transportation and related services information to the same extent that it would provide such information to English-speakers. Similarly, a recipient should assist LEP individuals who cannot read in understanding written materials as it would non-literate English-speakers. A non-written language precludes the translation of documents, but does not affect the responsibility of the recipient to communicate the vital information contained in the document or to provide notice of the availability of oral translation according to the size of that language group.

## ***Special Language Services Should be Locally Focused***

Language issues are sometimes local issues, due to matters of usage, dialect, and local preference. Recipient programs of special language services should be designed carefully to accommodate local usage and should be field tested with different local language populations to make appropriate corrections to ensure effective communication. Materials in both English and the primary or home language are generally preferred by non-English speaking groups, but use of English only may sometimes be more appropriate, especially if preferred by the community being served. To account for differences in literacy levels and to make materials more attractive, interesting and likely to be used, the use of photographs and illustrations is recommended. The keys are effectiveness, usability, and transmission of information.

## ***Charging for Special Language Services***

Recipients should not impose a charge or a fee for special language services to LEP persons.

## ***Separation for Purposes of Provision of Special Language Services***

There may be times when it is most efficient for the recipient to provide special language services separately to people who speak a particular non-English language. However, the program design should not separate these beneficiaries beyond the extent necessary to achieve the goals of the recipient's program of services. Methods that do not segregate should be used whenever possible.

## ***Puerto Rico***

Much of Puerto Rico's official business is conducted in Spanish. Therefore, recipients located in Puerto Rico or doing business there should, wherever possible, translate documents into Spanish.

## ***Low-Frequency and Unusual or Unexpected Languages***

When an individual with limited English skills—who does not speak a language spoken by a “significant number or proportion of the population”—seeks services or information from the recipient, the recipient should then make reasonable efforts to meet the particularized needs of that individual. Such efforts may include, but are not limited to, using a telephone language line, locating and temporarily employing a qualified interpreter who can communicate in the appropriate language. As technology advances, various options for complying with the requirements of this section, such as computerized and/or on-line translation services, are becoming increasingly available to recipients, and the cost of these options is decreasing.

An Asian-Pacific Islander health care advocacy group commented in this way on how transportation can present a barrier to health care for those who speak an unusual language for their location: “Removal of barriers such as transportation: It is important to ensure that there are systems established to address barriers such as transportation and portability in order to ensure that geographic location does not prevent patients from accessing care. [Medical Care Organizations] need to ensure that coverage for enabling transportation is included in the benefits package. Medicaid enrollees often need to access services in other counties. This is particularly important for patients in rural communities, for migrants and for limited English speaking populations. Limited English speaking persons may need to travel a great distance to see a provider who speaks their language.” (“Making Managed Care Work for Asian & Pacific Islanders: An Action Agenda for APIA Communities,” Dong Suh, MPP, Policy Analyst, (415) 954-9966, (415) 954-9999 (fax) or e-mail: dsuh@apiahf.org.)

## **Surveys**

Customer and service surveys by recipients and their contractors, including ones conducted by telephone, should include the ability to obtain information from LEP households and individuals. Given the large number and percent of LEP individuals in the U.S., a general survey would not be regarded as complete without the participation of people who are LEP. For example, NHTSA's semi-annual Motor Vehicle Occupant Safety Survey identified areas of seat belt and car seat safety where people of Hispanic origin differ from the non-Hispanic population. In the 1998 survey, 44% of Hispanic respondents strongly or somewhat agreed with the statement "I would feel self-conscious around my friends if I wore a seat belt and they did not," as opposed to just 15% of non-Hispanics. This information was used to tailor public information and education to the needs and attitudes of the targeted audience.

## **IX. Promising Practices/Best Practices**

The following examples are provided as illustrations of the responses of some recipients to the need to provide services to LEP persons. Although interesting and useful, their listing here does not constitute endorsement by DOT, which will evaluate recipients' situations on a case-by-case basis using the factors described elsewhere in this Guidance.

**Language Banks**—In several parts of the country, both urban and rural, community organizations and providers have created community language banks that train, hire and dispatch competent interpreters to participating organizations, reducing the need to have on-staff interpreters for low demand languages. These language banks are frequently nonprofit and charge reasonable rates. This approach is particularly appropriate where there is a scarcity of language services or where there is a large variety of language needs.

**Language Support Office**—A state social services agency has established an "Office for Language Interpreter Services and Translation." This office tests and certifies all in-house and contract interpreters, provides agency-wide support for translation of forms, client mailings, publications and other written materials into non-English languages, and monitors the policies of the agency and its vendors that affect LEP persons.

**Multicultural Delivery Project**—Another county agency has established a "Multicultural Delivery Project" that is designed to help immigrants and other LEP persons find someone who speaks their language and who can help them navigate the county health and social service systems. The project uses community outreach workers to work with LEP clients and can be used by employees in solving cultural and language issues. A multicultural advisory committee helps to keep the county in touch with community needs.

**Use of Technology**—Some recipients use their Internet and/or intranet capabilities to store translated documents online. These documents can be retrieved as needed.

**Telephone Information Lines and Hotlines**—Recipients have established telephone information lines in languages spoken by frequently encountered language groups to instruct callers, in the non-English languages, on how to leave a recorded message that will be answered by someone who speaks the caller’s language. For example, NHTSA’s Auto Safety hotline has four representatives who speak Spanish and are available during normal hotline business hours (8 a.m.-10 p.m. Eastern Time). The evening hours permit people from the West Coast (where a significant number of LEP persons reside) to call after work. The automated voice response system has an option for instructions in Spanish. Calls from Spanish-speaking customers are placed in a Spanish-speaking cue which has priority for those four operators who speak Spanish.

**Signage and Other Outreach**—Other recipients have provided information about services, benefits, eligibility requirements, and the availability of free language assistance, in appropriate languages by

- (a) posting signs and placards with this information in public places such as grocery stores, bus shelters and subway stations;
- (b) putting notices in newspapers, and on radio and television stations that serve LEP groups;
- (c) placing flyers and signs in the offices of community-based organizations that serve large populations of LEP persons;
- (d) establishing information lines in appropriate languages; and
- (e) using posters with appropriate languages designed to reach potential beneficiaries.

DOT’s Research and Special Programs Administration (RSPA), at 49 CFR 192.616 and 195.440, requires “Each [pipeline] operator [to] establish a continuing educational program to enable customers, the public, appropriate government organizations, and persons engaged in excavation related activities to recognize a gas pipeline emergency for the purpose of reporting it to the operator or the appropriate public officials. The program and the media used should be as comprehensive as necessary to reach all areas in which the operator transports gas. The program must be conducted in English and in other languages commonly understood by a significant number and concentration of the non-English speaking population in the operator’s area.” We recommend such an approach to recipients to meet their individual service provision needs.

The Governor’s Highway Safety Office in New Jersey coordinates several programs for the Hispanic community. In Essex County, a bilingual counselor provides community education on safety issues.

Proyecto AASUL (Assistance with Alcohol and Sobriety Uniting Latinas/Ayuda con Alcohol y Sobriedad Uniendo Latinas), funded by the California Department of Transportation, was developed to educate Hispanic women in Southern California about alcohol abuse

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and related problems. Information and services included a brochure listing alcohol-related service providers with Spanish speaking staff and a fotonovela focusing on the problems of alcoholism in a family setting. A fotonovela is an extensively illustrated booklet that tells a human-interest story.

The El Protector program has been implemented in Del Rio, Texas. The Del Rio Police Department has developed radio spots in Spanish, about traffic safety issues such as putting people in the back of pickup trucks, loading and unloading school buses, drinking and driving, and pedestrian safety.

EMS staff in Los Angeles reported that their system is equipped to receive calls in 86 languages, although Spanish is the most frequent language used by 911 callers who do not speak English.

The Michigan DOT has produced a Title VI poster and brochure in English and Spanish. It's public hearings officer speaks English and Spanish. One Michigan metropolitan planning organization (MPO) translated its I-496 community involvement materials into Spanish.

The New Jersey Department of Motor Vehicles (DMV) has administered drivers license tests in more than 14 languages for at least 10 years, including French, Greek, Korean, Portuguese, and Turkish. Other states conduct such tests in other languages. For example, Oregon DOT is in the process of having its tests translated into Japanese and Vietnamese. USDOT recommends that state agencies share such information, to avoid the necessity of each doing every translation.

The New Mexico State Highway and Transportation Department has, with FHWA support, provided Spanish language translations of its Right-of-Way Acquisition and Relocation Brochures. The State also employs bilingual right-of-way agents capable of discussing project impacts in Spanish.

Oregon's DMV website provides online access to English and Spanish versions of its Driver Manual. It has also contracted with a local government to provide additional classes to Hispanic drivers on "rules of the road" after they gain their driver's licenses. The State of Oregon is developing a report on multilingual services provided by State agencies. The final document will be used by State agencies to enhance their existing programs, including expanding communication efforts to serve and protect all Oregonians. On the NHTSA web site, the Traffic Safety Materials Catalog page has an option to permit a search for materials for an Asian-American or Hispanic audience. This search will result in several publications that are available in Spanish or Chinese.

In Puerto Rico, LEP needs have been addressed by providing all government services, programs and activities in Spanish.

Tennessee DOT recipients in a geographical area where there is a significant (above 5%) population that usually speak a language other than English, must translate and post notices and other correspondence advising persons that their right to participate in any programs or activities receiving federal funding cannot be denied on the basis of nation origin.

Texas DOT has in the past provided forms in Spanish to assist LEP persons in filling out forms to request certified copies of vehicle titles. TxDOT also utilizes bilingual employees in its permit office to provide instruction and assistance to Hispanic truck drivers when providing permits to route overweight trucks through Texas. In the on the Job Training Supportive Services Program, Spanish language television has been used to get the information of the opportunities in the construction industry to people who have difficulty reading English.

Virginia DOT became aware that several Disadvantaged Business Enterprise (DBE) firms were about to be removed from construction projects in Northern Virginia because projects required certified concrete inspectors, and the DBE firms were having trouble complying because the concrete inspection test was only offered in English. VDOT used supportive services funding to have the training manual and test material translated into Spanish, and provided tutoring for the DBE firms. The Virginia State Police (VSP) maintain a written list of interpreters available statewide to troopers through the Red Cross Language Bank, as well as universities and local police departments. The VSP carry cards with Miranda rights set forth in several different languages.

The Colorado State Patrol has produced safety brochures in Spanish for farmer and ranchers. It has also printed brochures in Spanish pertaining to regulatory requirements for trucking firms.

In 1996, the Alabama Department of Transportation (ALDOT) was faced with the relocation of 14 Spanish-speaking families who were living in a trailer park in north Alabama. The State determined that most of the residents met the length of occupancy requirements for rental relocation housing payments. Through a right-of-way consultant who was under contract with ALDOT, an interpreter was hired from the University of Alabama—Birmingham to assist the relocation agent in explaining Uniform Relocation Act entitlements to the heads of families. The interpreter was on call throughout the relocation process to accompany the relocation agent whenever it was necessary to contact the displacees. The families were successfully relocated to Department of Social Services replacement housing. Several families moved into surplus Federal Emergency Management Agency mobile homes that were made available through a private buyer who gave the displacees the option of renting or entering into a purchase agreement.



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Minnesota DOT (MnDOT) authored a manual entitled “Public Involvement Procedures For Planning and Project Development” that details Mn/DOT requirements to provide access to all residents of Minnesota under environmental justice standards. The manual takes a proactive approach to public involvement. It includes such things as publishing notices in non-English newspapers, printing notices in appropriate languages and providing translators at public meetings. Mn/ DOT’s Office of EEO Contract Management provides a Spanish language version of a brochure entitled “Mn/DOT Construction Contracts: Labor Provisions for Contractor Employees” to construction employees during reviews and upon request to Contractors for employee distribution. This pamphlet provides general guidelines to labor laws and Mn/DOT contract labor provisions. Mn/DOT’s Office of EEO Contract Management is on call to provide Spanish language translation at Mn/DOT’s Information Desk. In addition, telephone numbers are provided to persons who wish to speak directly to Spanish-speaking EEO Office employees.

Mn/DOT’s Office of EEO Contract Management provides Spanish language translations in both written communications and oral interviews for labor investigations. In addition, the EEO Office provided written materials in Spanish for explanation of processes and procedures for such investigations.

Wisconsin DOT created a Motorist Study Manual Easy reader (3rd grade level, translated by the Janesville Literacy Council) version in English. It is creating one in Spanish and is considering Hmong. There are regular versions (6th grade level) in English, Spanish and Hmong. There is a Motorcycle Study Manual in English and Spanish, and a CDL (Commercial Drivers License) Study Manual in English and Spanish. Knowledge and Highway Sign Tests are provided in 13 languages besides English. Some languages have been available since the late 1970s. Bids are being prepared to update the bank of questions in non-English languages based on demand. Knowledge and Highway Sign Tests are provided via various audio means ranging from cassette tapes in English and Spanish to allowing bilingual translators to verbally present the questions in non-English languages based on demand. A pilot to evaluate automated knowledge test systems is underway at three DMV Service Centers. The pilot includes tests in English, Spanish, and on audiotape. These automated knowledge test systems allow testing in many languages. The Division of State Patrol is using a compact disk with commonly used phrases and sayings in languages other than English that is printable to a paper card, which then contains the phrase in an appropriate language for the LEP person who is interacting with the officer. The officer points to the appropriate column on the card. WIDOT also keeps a roster of employees who speak, read, or write non-English languages.

In Indiana, 15 Commercial Drivers License branches offer the CDL knowledge test orally, in a true/false format.



The Zuni Entrepreneurial Enterprises Inc. (ZEE) Public Transportation Program was designed to develop, implement, and maintain a transportation system that provides needed linkages for Native Americans and other traditionally unserved/ underserved persons in the service area to access needed vocational training and employment opportunities in order to enhance both the quality of life and the attainment and perpetuation of meaningful employment. The trip purposes served by the Zuni JOBLINKS project included education, employment, and job training. ZEE provided transportation of students to the University of New Mexico at Gallup, transportation of employees to their existing jobs in Gallup, as well as transportation for individuals requiring vocational rehabilitation and job training within the Pueblo of Zuni. The Project Director also took a number of steps to market the JOBLINKS service. He coordinated the broadcast of a radio spot on a local radio station in English and Zuni.

Seattle's Sound Transit's Link Light Rail to the Rainier Valley in south Seattle is an example of best practices. Demographically, the Rainier Valley is home to a high percentage of immigrant, refugee, low income, and disadvantaged Seattle residents. In addition to providing direct service benefits, Sound Transit has also provided the community with information they need to access the service in the appropriate languages. This has taken the form of translated brochures, outreach staff skilled in interpretation, and multilanguage phone lines. etc.

The Washington, DC area's Metro transit system (WMATA) publishes pocket guides to the system in French, Spanish, German, and Japanese.

The following example, although it is focused on people who are deaf, is applicable to people who are LEP. Portland's Tri-Met transit system had a growing concern that access needs of people who are deaf or hard-of-hearing have not been fully addressed, due to more immediate ADA priorities such as putting lifts on buses and implementing paratransit plans. They contacted the Oregon Deaf Resources Center (ODRC) to discuss problems and issues and examine how to make public transportation more accessible to this segment of the disability community. One of the first things Tri-Met learned was that the main barrier in fixed-route travel for people who are deaf is difficulty in getting bus drivers to understand questions and provide information. In fact, people in Portland's deaf community reported that they seldom receive accurate, informative communication from transit drivers. The idea developed was to produce a set of pictograms that illustrate situations that typically arise during fixed-route travel, particularly those that are difficult to verbally communicate to people who are deaf or hard of hearing. The pictograms would be laminated and attached to the bus close to the driver to be readily available when needed. As with many improvements in accessibility, it is expected that enhanced communication capability will not only benefit people with hearing impairments, but will also improve communication with other passengers with disabilities, such as those who have cognitive impairments. Tri-Met submitted a proposal to Project ACTION and

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received funding to develop a standardized picture language for communicating various situations that can occur during fixed-route travel. Suggestions for the type of information to be included in the pictograms were solicited by from deaf communities across the country. The project also includes developing a transit personnel training video, created and produced by people who are deaf, to educate transit drivers about deaf culture. Another project product is an information booklet that illustrates the pictograms and hand signals.

In 1980 when Souris Basin Transportation in North Dakota first started, the illiteracy rate was high among the senior population in their area of operation. To help them identify the bus on which they were riding, SBT started using visual logos on the sides of the vehicles. They have now found that the illiteracy rate has dropped among the seniors, but the LEP population has grown. Therefore, SBT kept the logos on the vehicles. SBT has also added volunteers who speak languages other than English, such as Spanish, German, Norwegian, Swedish and French. These volunteers are only a phone call away from the drivers or staff that need help. Most of the volunteers are at the Minot State University Language Department.

Florida conducts CDL tests in any language needed, and provides interpreters if needed. Out of service warnings for trucks are issued in Spanish and English.

The Iowa Department of Transportation provides a Spanish version of the CDL knowledge test, using a touch screen computer. In addition, they have worked with Refugee Services of Des Moines, and with a local community college in educating Bosnian refugees to take the Commercial Motor Vehicle driving course. DOT especially recommends the idea of working with local community colleges to educate the LEP community in transportation matters.

## ***Sample Notice of Availability of Materials and Services***

**“FOR FURTHER INFORMATION CONTACT:** For hearing impaired individuals or non-English speaking attendees wishing to arrange for a sign language or foreign language interpreter, please call or fax [name] of [organization] at Phone: xxx-yyy-zzzz or Fax: xxx-yyy-zzzz.”

If there is a known and substantial LEP population which may be served by the program discussed in the notice, the notice should be in the appropriate non-English language.

## ***Resources***

U.S. Department of Justice, General LEP Guidance, August 2000.

U.S. Department of Health and Human Services, Limited English Proficiency Guidance.

U.S. Department of Health and Human Services, “Cultural Competence.”

Environmental Protection Agency, “Draft Translation and Interpretation Protocol for Promoting Access to EPA Programs, Services, and Information by Persons With Limited English Proficiency.”

Glossary of Transportation Terms, English-Spanish, 1994, Federal Highway Administration.

North American Emergency Response Guidebook (NAERG96), published jointly by the U.S. Department of Transportation, Transport Canada (TC), and the Secretariat of Communications and Transportation of Mexico, in English, French and Spanish.

National Directory of Asian Pacific American Organizations, 1999-2000, Organization of Chinese Americans, available through Philip Morris Management Corporation, 120 Park Av., NY, NY 10017.

Southeast Asian American Mutual Assistance Association Directory, 2000, Southeast Asia Resource Action Center, 1628 16th St., NW., Washington, DC 20009, 202-667-4690, [www.searac.org](http://www.searac.org).

Red Cross Language Bank.

“Highway Safety Needs of U.S. Hispanic Communities: Issues and Strategies,” NHTSA, September 1995, DOT HS 808 373.

Since 1995, individual border States Division Offices of the Department’s Federal Motor Carrier Safety Administration (formerly the FHWA Office of Motor Carriers) have translated a number of documents into Spanish to be used to educate Mexican carriers and drivers operating in the commercial zones. These subjects covered include meaning of out-of-service orders, minimum requirements to operate in the U.S., one page pamphlet that explains the U.S. certification program, one page bulletins on various Federal Motor Carrier Safety Regulations, how to obtain an U.S. DOT vehicle identification number, and state specific safety regulations. The following brochures/guidance have been translated into Spanish and are currently distributed at the border or are being reviewed for possible distribution at the U.S. Southern border:

- FMCSRs—Drivers Guide to the FMCSRs (JJ Keller Publication).
- Drug and Alcohol Regulations (JJ Keller Publication).
- HM Basic Awareness Training Course (CD FMCSA Publication).
- MX Program Pamphlet (FMCSA Publication) [Currently Distributed]
- Road User Guide for North America (FHWA Publication) [Currently Distributed in English, Spanish, and French]

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- Awake At the Wheel (FMCSA Publication) [Currently Distributed] Materials developed for international use, such as those developed by FMCSA's ITS/CVO Technology Division for use with border partners Canada and Mexico. These include its pocket brochure in English, Spanish, and French. It is also developing Spanish video scripts.

The Canadian Council of Motor Vehicle Administrators is developing a trilingual chart for conducting roadside commercial vehicle inspection.

"La Seguridad de los Materiales Peligrosos," (The Safety of Dangerous Materials), RSPA, DOT.

The International Pictograms Standard, 414 SE Grand Avenue, Portland, Oregon 97214 USA, (503) 234-1400. "Making connexions for the Transit Customer," Breaking down illiteracy and other barriers to transit travel. A multi-media computer software program to help people with barriers to literacy become independent transit riders. The software program includes photos, video and voice narration to help clients learn how to best use public transit. Clients use the program at their learning level and pace, on their own, or with the help of a facilitator.

## Data Sources

- Census
- Public Schools
- Community-based organizations
- Advocacy and special interest groups
- Indian tribes
- Immigrant aid organizations
- Welfare to Work organizations
- Job Access service providers
- State Migrant Coordinators
- State Refugee Coordinators
- Local refugee services organizations
- National, regional, and local ethnic advocacy organizations
- Unions that represent farmworkers, service workers, and entry level jobholders
- Legal services organizations
- Staff of elected officials in areas with substantial national origin minority communities
- National Environmental Policy Act (NEPA) related demographic studies
- Hispanic Data Handbook

- National Clearinghouse for Bilingual Education
- Center for Applied Linguistics, [www.cal.org](http://www.cal.org)
- Hispanic Ministry of Catholic Dioceses, Catholic Social Services, Episcopal Bishop's Fund, Hebrew Immigrant Aid Society, and other faith-based entities that serve LEP people
- Language, Demographics and Population Studies Departments at local universities
- Commercial marketing data
- Minority marketing firms

## Appendix A to DOT Guidance

DOT's Title VI regulation (49 CFR Part 21) states the following, in part:

### ***§ 21.5 Discrimination prohibited.***

- (a) General. No person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program to which this part applies.
- (b) Specific discriminatory actions prohibited:
- (1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on the grounds of race, color, or national origin.
    - (i) Deny a person any service, financial aid, or other benefit provided under the program;
    - (ii) Provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under the program;
    - (iii) Subject a person to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;
    - (iv) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;
    - (vi) Deny a person an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program; or
    - (vii) Deny a person the opportunity to participate as a member of a planning, advisory, or similar body which is an integral part of the program.

# LEP DOT Guidance

- (2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of person to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of persons to be afforded an opportunity to participate in any such program; may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.
- (5) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.
- (7) This part does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin.

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**LANGUAGE IDENTIFICATION FLASHCARD**

☐

املاً هذا المربع اذا كنت تقرأ أو تتحدث العربية.

Arabic

☐

Խաղաղում ենք նշում կատարեք այս քառակուսում,  
եթե խոսում կամ կարդում եք հայերեն:

Armenian

☐

যদি আপনি বাংলা পড়েন বা বলেন তা হলে এই বাক্সে দাগ দিন।

Bengali

☐

សូមបញ្ជាក់ក្នុងប្រអប់នេះ បើអ្នកអាន ឬនិយាយភាសា ខ្មែរ ។

Cambodian

☐

Matka i kahhon komu un taitai pat un sang i Chamorro.

Chamorro

☐

如果您具有中文閱讀和會話能力，請在本空格內標上X記號。

Chinese

☐

Make kazyé sa a si ou li oswa ou pale kreyòl ayisyen.

Creole

☐

Označite ovaj kvadratić ako čitate ili govorite hrvatski jezik.

Croatian (Serbo-Croatian)

☐

Zaškrtněte tuto kolonku, pokud čtete a hovoříte česky.

Czech

☐

Kruis dit vakje aan als u Nederlands kunt lezen of spreken.

Dutch

☐

Mark this box if you read or speak English.

English

☐

اگر خواندن و نوشتن فارسی بدرهستین، این مربع را علامت بگذارید.

Farsi

<input type="checkbox"/>	Cocher ici si vous lisez ou parlez le français.	French
<input type="checkbox"/>	Kreuzen Sie dieses Kästchen an, wenn Sie Deutsch lesen oder sprechen.	German
<input type="checkbox"/>	Σημειώστε αυτό το πλαίσιο αν διαβάσετε ή μιλάτε Ελληνικά.	Greek
<input type="checkbox"/>	अगर आप हिन्दी बोलते या पढ़ सकते हैं तो इस गोले पर चिह्न लगाएँ।	Hindi
<input type="checkbox"/>	Kos lub voj no yog koj paub twm thiab hais lus Hmoob.	Hmong
<input type="checkbox"/>	Jelölje meg ezt a kockát, ha megérti vagy beszél a magyar nyelvet.	Hungarian
<input type="checkbox"/>	Markaam daytoy nga kahon no makabasa wenno makasaoka iti Ilocano.	Ilocano
<input type="checkbox"/>	Marchi questa casella se legge o parla italiano.	Italian
<input type="checkbox"/>	日本語を読んだり、話せる場合はここに印を付けてください。	Japanese
<input type="checkbox"/>	한국어를 읽거나 말할 수 있으면 이 칸에 표시하십시오.	Korean
<input type="checkbox"/>	ໃຫ້ໝາຍໃສ່ຊ່ອງນີ້ ຖ້າທ່ານອ່ານຫຼືປາກພາສາລາວ.	Laotian
<input type="checkbox"/>	Zaznacz tę kratkę jeżeli czyta Pan/Pani lub mówi po polsku.	Polish
<input type="checkbox"/>	Assinale este quadrado se voce lê ou fala Português.	Portuguese



<input type="checkbox"/>	Însemnați această căsuță dacă citiți sau vorbiți Românește.	Romanian
<input type="checkbox"/>	Пометьте этот квадратик, если вы читаете или говорите по-русски.	Russian
<input type="checkbox"/>	Maka pe fa'ailoga le pusa lea pe afai e te faitau pe tusitusi i le gagana Samoa.	Samoan
<input type="checkbox"/>	Обележите овај квадратик уколико читате или говорите српски језик.	Serbian (Serbo-Croatian)
<input type="checkbox"/>	Označte tento štvorček, ak viete čítať alebo hovoriť po slovensky.	Slovak
<input type="checkbox"/>	Marque esta casilla si lee o habla español.	Spanish
<input type="checkbox"/>	Markahan ang kahon na ito kung ikaw ay nagsasalita o nagbabasa ng Tagalog.	Tagalog
<input type="checkbox"/>	ให้กาเครื่องหมายลงในช่องถ้าท่านอ่านหรือพูดภาษาไทย.	Thai
<input type="checkbox"/>	Faka'ilonga'i 'ae puha ko'eni kapau 'oku te lau pe lea 'ae lea fakatonga.	Tongan
<input type="checkbox"/>	Відмітьте цю клітинку, якщо ви читаете або говорите українською мовою.	Ukrainian
<input type="checkbox"/>	اگر آپ اردو پڑھتے یا بولتے ہیں تو اس خانہ میں نشان لگائیں.	Urdu
<input type="checkbox"/>	Xin đánh dấu vào ô này nếu quý biết đọc và nói được Việt Ngữ.	Vietnamese
<input type="checkbox"/>	צייכונט דעם קעסטל אויב איר שרייבט אדער ליינט אידיש.	Yiddish

*Please refer to the Title VI Program Resource Directory for website addresses to obtain additional information regarding Title VI and Environmental Justice, the University of California GPO Gate Government Document Search Database and the National Archives and Records Administration both great resources to review and/or download legislation.*

*In addition refer to the Civil Rights Title VI Program Resource Directory to obtain contact names and telephone numbers for the following:*

- *Western States Region, Department of Transportation Listing*
- *Federal Highway Administration, California Division*
- *Federal Transit Administration, California Division*
- *Department of Transportation*

*Civil Rights Management*

*Title VI Program*

*District Equal Opportunity Officers*

*District Title VI Liaisons*

*Division Program Area Administrator*

*Native American Liaisons/Coordinators*



Civil Rights  
**TITLE VI PROGRAM**  
[guidelines & appendices]